

REVISITING THE APPLICATION OF THE TEN YEAR GENERAL PERIOD OF LIMITATION: JUDICIAL DISCRETION TO DISREGARD ART 1845 OF THE CIVIL CODE

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Abstract

The period of ten year stipulated in Art 1845 of the Civil Code is widely accepted as a General Period of Limitation (GPoL) and is often applied to all civil claims irrespective of the origin and nature of obligations unless a special period of limitation has been fixed by law. However, due to the absence of a clear rule regarding the dimension and scope of its application, the general applicability of Art 1845 has been contested on different occasions. Thus, this article examines the issue of whether the period of ten year is appropriate for all civil claims or not while assessing the instances where such GPoL could be disregarded by the discretion of the court under the guidance of certain considerations. Accordingly, it canvasses the issue of whether the court should always apply the ten year GPoL by the mere fact that the law provides neither a special period of limitation nor exclusionary rule, or ought there be a little room where the court may apply some other period of limitation to other similar claims by analogy; or exempt certain claims from the subject of limitation before the move to apply Art 1845 of the Civil Code, which is explicitly stipulated for contractual claims. This article concludes that even though the argument advocating for the general application of the ten-year period in the absence of special periods of limitation is a widely shared view, the door should not be totally closed for judicial discretion whereby the period may be disregarded on the basis of different considerations. However, since the reliance on judicial discretion to override a limitation period would render the law too uncertain, the author maintains that Ethiopia should adopt a separate and relatively comprehensive statute of limitation that clearly provides, inter alia, the dimension and scope of application of the ten year GPoL and lists of claims exempted from the subject of limitation to avoid the misuse of Art 1845 of the Civil Code.

Key Words: Period of Limitation, General Period of Limitation (GPoL), Special Period of Limitation, Judicial Discretion, exclusionary rules, Cassation Decision

Introduction

With a view to protect the defendant from dormant claims, different periods of limitations are stipulated in our civil laws. The ten year GPoL stipulated under the general Contract of the Civil Code is one of such legally fixed time limits.¹ Despite the existence of limitation provisions, however, the legal framework governing the period of limitation in civil cases has a number of lacuna compared to criminal cases. The existence of a number of cassation decisions on different aspects of periods of limitations² confirms the controversial nature of the issue and the existence of huge legal gaps throughout the jurisprudence of limitations of actions in civil cases in Ethiopia in general and the scope of application of Art 1845 of the Civil Code in particular.

Even though the ten year period stipulated in Art 1845 of the Civil Code is widely accepted as a GPoL in civil cases, irrespective of the nature of the claim or the origin of the obligation thereto³, the dimension and scope of its application has been contested at different times. As revealed in various cassation decisions there is a general tendency of applying the ten year GPoL during the absence of special limitation periods. Moreover, courts often do not have the discretionary power to apply a given legally fixed period of limitation on other similar claims by analogy or exempt certain claims from the subject of limitation depending upon different policy considerations before the rush to apply the ten year GPoL, which is principally fixed for contractual claims.

However, here it should be noted that the trend of applying the ten-year period to all civil claims by the mere fact that special periods have not been fixed by law and irrespective of other considerations may result in the misuse of period of limitation contrary to the intention of the

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¹ Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, (hereinafter the Civil Code of Ethiopia or the Civil Code), Art 1845.

² One can frequently find limitation period related cases in each published volumes of '*Decisions of the Federal Supreme Court Cassation Division*' that reached its 17th volume during the writing up of this article. From the existing published volumes one can count more than 140 cassation decisions given on different aspects of periods of limitation in civil cases including labor, succession, property, sale, and other contractual and extra contractual cases. Especially issues related with the subjectivity or otherwise of a certain civil claim by the rule of limitation of action, the calculation, interruption, suspension, and extension of period of limitations, when and by whom the defense of lapse of period of limitations should be raised, which limitation periods apply on the case at hand, which factors constitute sufficient cause for delay so that the claims could be instituted after the lapse of time as well as the dimension and scope of application of the ten year general period of limitation stipulated in Art 1845 of the civil code are among the points of discussions before the Federal Cassation Division.

³ See Art 1845 Cum with Art 1676 (1) and Art 1677 (1) of the Civil Code, where the general applicability of the ten-year period of limitation has been justified to contractual or non-contractual claims respectively.

legislature. Accordingly, the court's discretion in determining the applicability or otherwise of the ten-year GPoL and the factors that could be taken into consideration while limiting its ambit of application are discussed in this article. However, due to the absence of a clear rule that authorizes courts to exercise a little discretion in disregarding the ten year GPoL and thereby apply some other periods of limitation by analogy or exempt certain claims from the subject of limitation, the argument that advocates for judicial discretion in this regard should not be seen as argument *lex lata* (based on the law as it currently is) but argument *de lege ferenda* (the law as it ought to be). Therefore, the article principally aims to identify the possible considerations that could be taken by courts in disregarding the application of the ten year GPoL with a view to revisit the application of Art 1845 of the Civil Code.

Section one discusses about the concept of period of limitation and the justifications thereto. It further presents the types of periods of limitations in civil cases and the way they are recognized under the Ethiopian legal system. Section two examines the rationale for adopting different rules and lengths of periods of limitation in the Ethiopian context depending upon the nature of cases as civil, criminal, substantive or procedural. Section three briefly presents the manner that limitation periods are designed in our civil laws and the determinant factors that could be taken into consideration while identifying the appropriate period of limitation. Section four examines the legal gaps and challenges that may pave the way for the misapplication or interpretation of limitation provisions. The fifth, and the main, part of the article examines the different instances where the ten year GPoL could be disregarded by the discretion of the court under certain guiding conditions.

1. The Concept of Period of Limitation: Meaning, type and purpose

The concept of periods of limitation, which date back to the ancient Roman law⁴, are a fundamental part of all legal systems, including Ethiopia, even though the purpose, the degree and the detailed rules of implementation may vary from country to country depending on the type of the legal tradition they adopted and the nature of the individual cases involved.⁵

⁴ Martin Clausmitzer (1980), 'The Statute of Limitation for Murder in Federal Republic of Germany', the International and Comparative law quarterly, Vol. 29, No 2/3, Cambridge University Press on behalf of the British Institute of International and Comparative law, p. 474.

⁵ Tilahun Teshome (2002), 'Basic Principles of Ethiopian Contract Law', (2nd ed., Published by the Book Center, Addis Ababa), p. 182.

Limitation periods impose time limits within which a party must bring a claim, or give notice of a claim to the other party under the pain of loss of right.⁶

Limitation periods have long been understood to be part of the defendant's arsenal in the litigation battle. As a device more appropriately described as '*a shield than a sword*', a limitation period operates to bar an action, irrespective of its merit, if not commenced within the amount of time prescribed by statute.⁷ But the bar is not automatic and the court cannot plead limitation in civil cases by its own initiation unless specifically pleaded by the defendant.⁸

Depending upon the civil or criminal/substantive or procedural natures of claims that the stipulated periods are intended to govern, periods of limitations may have the form of civil/criminal or substantive/procedural as the case may be. In substantive laws of civil cases, the limitation provisions, or otherwise called 'prescriptions', set a rule whereby someone may lose a right to make his claim based on the lapse of time, or where the one who was not originally the owner of a certain property may acquire the ownership right thereof if he is able to prove the fact that the instant property has been possessed by him for a long period of time coupled with other legal requirements.⁹

At this juncture, however, it is important to note that although the term 'prescription or period of prescription' and 'limitation or period of limitation' are often used interchangeably; they are actually two different but related concepts. Prescription, as defined under the Black's Law Dictionary (which is an authoritative source for the meanings of terms in law), is a general term that consist two concepts; namely 'liberative' and 'acquisitive' prescriptions.¹⁰ '*Liberative prescription*' which is applicable in the law of obligation in general is the one that exonerates

⁶ Kok (2007), '*Statutory Limitations in International Criminal Law*', PHD Thesis, Amsterdam Center for International Law (ACIL), p. 27.

⁷ Janet Mosher (1994), '*Challenging Limitation Periods: Civil Claims by Adult Survivors of Incest*', University of Toronto Law Journal, Vol. 44, No.2, p.169.

⁸ Ibid, p.182. See also Art 1856 (1) of the Civil Code in tandem with Art 244 (3) of the Civil Procedure Code of the Empire of Ethiopia (1965) (hereinafter the Civil Procedure Code of Ethiopia).

⁹ T. Teshome, *supra* note 5, p. 181.

¹⁰ On one hand, the Black's Law Dictionary defined the term 'prescription' as '*the effect of the lapse of time in creating and destroying rights.*' In this sense, it can be termed as '*negative prescription or extinctive prescription*'. On the other hand, the term 'prescription' is also defined as '*the acquisition of title to a thing (esp. an intangible thing such as the use of real property) by open and continuous possession over a statutory period.*' In this sense, it can be termed as '*positive prescription or acquisitive prescription.*' (See *Black's Law Dictionary* (2004), 18th ed., Garner, Editor in Chief). Accordingly, there are two kinds of prescriptions that bar substantive claims in civil cases namely *liberative* and *acquisitive* prescriptions.

debtors from their obligations while the creditors lose their right to demand the same.¹¹ Accordingly, Blacks' Law Dictionary defines the term 'liberative prescription' as 'a *bar to a law suit resulting from its untimely filing*'. The term is essentially the civil law equivalent of 'limitation', which is defined as 'a *statutory period after which a lawsuit or prosecution cannot be brought in court.*'¹²

While the term 'acquisitive prescription' is defined as 'a *mode of acquiring ownership or other legal rights through possession for a specified period of time.*'¹³ This rule was known to the Romans as *usucaption*¹⁴ which has descended to modern jurisprudence under the name of 'prescription'.¹⁵ Accordingly, 'acquisitive prescription' or 'usucaption' provides a rule by which the person who appropriates a property, which has no claimant, in his possession for a long period of time can be the owner thereof at the time when the period prescribed under the law has expired along with other legal requirements.¹⁶ As argued by scholars, this type of prescription is the result of the philosophy, dictating the historical nexus of possessory right (long possession) with the origin of ownership right.¹⁷

From the aforementioned discussion, one can understand that the term 'prescription' is a generic term consisting of two concepts viz. liberative and acquisitive prescriptions, which connotes 'limitation' and 'usucaption' respectively, making the term *prescription* wider than *limitation*. Therefore, in the strict sense of the term, 'prescription' or 'period of prescription' does not necessarily imply limitation or period of limitation although such terms are often used interchangeably.

When we come to the Ethiopian arena, the concept of 'liberative prescription' has been widely prescribed in our civil laws, including the Civil Code, which is the prominent civil law of the country, under the name of 'limitation', 'period of limitation', 'periods of time', 'limitations of action' or '*yirga*' in Amharic, having the effect of exonerating the respective debtors from their

¹¹ T. Teshome, *supra* note 5, p. 181.

¹² Here the term 'limitation' can also be termed as 'limitations period'; 'limitation periods'; 'limitation of action' or 'a statute of limitations' (see Black's Law Dictionary, *supra* note 10).

¹³ Ibid

¹⁴ Ibid. Here the term 'usucaption' is defined as '*the acquisition of ownership by long possession begun in good faith; esp. the acquisition of ownership by prescription.*' It can also be termed as *usucapio*, *usus* or *usucapion*..

¹⁵ Herry S. Maine (1901), *Ancient Law*, 17th ed., p. 236.

¹⁶ T. Teshome, *supra* note 5, p. 181.

¹⁷ Paton, George W. (1964), *A Text Book of Jurisprudence* (3rd ed., Oxford at the Clarendon Press), pp.485-489.

obligations.¹⁸ Regarding the concept of ‘acquisitive prescriptions’, there are certain provisions of the Civil Code that prescribe the concept under the name of ‘usucaption’ or ‘prescription’, as the case may be, although one cannot frequently find such kinds of prescriptions in our civil laws compared to the widely recognized concept of ‘liberative prescriptions’.¹⁹ With respect to the acquisition of immovable property, for example, the concept has been recognized under Art 1168 of the Civil Code where the ownership of immovable property may be acquired by ‘usucaption’²⁰, except for certain cases where such a rule cannot be applied.²¹ The Civil Code

¹⁸See for example, Art 338, 1000, 1346, 1845-1856, 2065, and 2143 of the Civil Code, Art 318 of the Federal Revised Family Code, and Art 162-166 of the Labour Proclamation No. 377/2003, Federal Negarit Gazeta, 10th Year No. 12, Addis Ababa, 26th February 2004 (hereinafter Labour Proc.). However, there are also different limitation provisions which used phrases like, ‘...under pain of losing right...’, ‘...the claim shall be barred if not brought within ...’, or ‘...may no longer avail himself of...’ and the like, which partly shows such provisions are dealing about period of limitation, although such kinds of expressions may not necessarily and always imply period limitation (See for example, Art 402 (2), 1149 (2), 1158 (3), 1165 (2), 1174 (3), 1488 (2), 1810, 2298, 2299 and 2892 (3) of the Civil Code).

¹⁹ See for example, Art 1168 and Art 1366 of the Civil Code which use the term ‘usucaption’ and ‘prescription’ respectively to connote the concept of ‘acquisitive prescription’ with respect to immovable property. However, unlike the term ‘prescription’, which has been used under our Civil Code to connote both acquisitive and liberative prescriptions as the case may be (See for example, Art 1366/1367 which used the term ‘prescription’ to connote acquisitive prescription in one hand; and Art 1192 and 1382 which used the same term to connote liberative prescription), the Civil Code consistently used the term ‘usucaption’ to connote acquisitive prescription and in the manner that seems that the Code used the term only in relation with immovable property (See for example, Art 1168, 1493(1), 1639, and 2065 of the Civil Code).

²⁰ Art 1168 of the Civil Code. As provided in the provision, usucaption is a rule where the possessor of immovable property who has paid for fifteen consecutive years the taxes relating to the ownership of an immovable shall become the owner of such immovable. However, here it is important to examine the scope of applicability of this provision (i.e. to which kind of immovable properties the rule of usucaption applies?). This required to examine what the term ‘immovables’ under Art 1168 of the Civil Code currently implies along with the concept of ownership of immovable properties, particularly the ownership of land. In this regard, according to Art 1130 of the Civil Code, land and buildings are considered as immovable properties under the Ethiopian law. Thus, obviously the term ‘immovables’ under Art 1168 of the Civil Code refers to both ‘land’ and ‘building’ so that the ownership of land can also be acquired through usucaption. This is because, the Civil Code has enacted at the time where ‘private ownership’ of land was a rule. But currently it is important to note that land is the property of the state and the people (See Art 40(3) of the FDRE Constitution). Accordingly, individuals cannot own land by any means including usucaption. Nevertheless, I believe that the state ownership nature of the land shall not erode the applicability of the concept of usucaption stipulated under Art 1168 of the Civil Code on land, as part of the immovable property. Although at present individuals cannot own land, they have holding rights on rural and urban lands. Therefore, Art 1168 of the Civil Code can be applied on such land and the holding rights thereto by *mutatis mutandis*.

²¹There are different provisions of the Civil Code dealing about exceptional instances where the rule of usucaption cannot be applied. See for example, Art 1168(1) of the Civil Code which exclude land found under the system of ‘rist’ or ‘family land’ from the subject of usucaption. However, at present, since there is no system of ‘rist’ to be applied on land or buildings, there is no way where such exception of Art 1168(1) could be applied [regarding the concept of ‘rist’ and its validity in the present Ethiopia, see ‘Decisions of the Federal Supreme Court Cassation Division’ in the cases of *Elfinesh Amare vs Girma Amare* (CFN 34011, Megabit 25/2000 EC., Vol. 6, pp. 282-284); and *W/ro Tsehaynesh Adem eta vs heirs of Eshetu Tesfaye* (CFN 30158, Sene 19/2000 EC., Vol. 7, pp. 201-206)]. Moreover, property forming part of the ‘public domain’ and land owned by an ‘agricultural community’ cannot be acquired by usucaption (See Art 1455 and Art 1493(1) of the Civil Code). See also Art 1314(2) of the Civil Code. Therefore, when we apply Art 1168 of the Civil Code by *mutatis mutandis*, it is important to consider such exceptional instances.

also recognized the concept while dealing with ‘*acquisition of servitude by prescription*’ where an apparent servitude may be acquired by enjoyment for ten years.²² However, unlike the case for immovable properties, the Civil Code of Ethiopia does not clearly stipulate a mechanism whereby the ownership of movable properties can be acquired through ‘usucaption’ (possession for a given period of time) although some of the provisions of the Civil Code dealing with the acquisition and extinction of ownership seem like rule of ‘usucaption’ from the outset.²³

Another point that needs to be addressed here is the issue of terminologies that have been used to prescribe the concept of acquisitive and liberative prescriptions. Accordingly, it is important to examine the usage of such terms (limitation, usucaption and prescription) and their connotations in our civil laws. As mentioned above, the concepts of liberative prescription and acquisitive prescription are often prescribed in our civil laws under the name of ‘period of limitation or limitation’ and ‘usucaption or prescription’ respectively. However, the Amharic version of the Civil Code used the same term ‘*yirga*’ to prescribe both kinds of prescriptions, creating confusion between the two concepts.²⁴ Actually, when the Code used the term ‘usucaption’ or other similar wordings that go in line with the concept of Art 1168, I believe that it should be construed as implying acquisitive prescription rather than a limitation.²⁵ But with respect to the usage of the term ‘prescription’, it is difficult to say that our Civil Code uses the term

²²Art 1366 of the Civil Code.

²³For example, the following provisions of the Civil Code seemed that they are providing the rule of ‘usucaption’ for movable property, although actually they are not. In this regard, see for example Art 1151 (which provides the concept of *res nullius*, where the possession become the owner of the chattel which has no master); Art 1193(1) Cum Art 1192 (which provides the rule of ‘*presumption of ownership*’, where the possessor of the chattel may remain as the owner of the property since the true owner cannot rebut such presumption of ownership after the expiry of the ten year period of limitation stipulated under Art 1192 of the Civil Code); Art 1157 (1) Cum Art 1192 (the rule on ‘object found’) where the owner of the object lost may not require its restitution from the finder, if he has lost the ownership thereof, for example in accordance with the limitation rule of Art 1192; and Art 1192 of the Civil Code itself (where the *accontrario* reading of the provision seems to allow the person who has possessed the chattel for ten year to acquire the ownership thereof although it principally addresses the issue where the owner of a chattel shall lose his ownership rights (i.e. the concept of period of limitation) rather than the acquisition of ownership through possession or use of the chattel for ten year).

²⁴Many civil laws of the Country, including the Civil Code, often used the term “‘limitation” and in Amharic ‘*yirga*’ to connote limitation of actions. However, the heading of Art 1192, Art 1150 (1), 1382 and 1639 of the Civil Code for example used the term ‘prescription’ while the Amharic version of the same provisions used the term ‘*yirga*’, creating a confusion with the concept of ‘period of limitation’ to which the Code also used the same term ‘*yirga*’.

²⁵ In this regard, actually except Art 1168 of the Civil Code (the Amharic version of which used the term ‘*yirga*’) the other provisions of the Code stipulating the concept of acquisitive prescriptions (as prescribed either under the name of ‘usucaption’, ‘prescription’ or some other wordings) did not used the Amharic term ‘*yirga*’ to prescribe the concept of acquisitive prescription or usucaption. Rather, the Code often used phrases that stipulates the requirement of ‘long possession or use’ to invoke the rule of usucaption (See for example, the Amharic versions of Art 1314, 1366, 1367, 1455, 1493(1), and 1639 of the Civil Code).

consistently to prescribe one concept (either the concept of limitation or usucaption) since it often uses the same term indifferently to connote both concepts.²⁶

Beyond the usage of terms, a question may arise as to whether the rule of usucaption recognized under Art 1168 of the Civil Code amounts to a period of limitation or not under the Ethiopian legal system. Although, some writers categorize acquisitive prescription (usucaption) as a limitation as if both kinds of prescriptions deal with the concept of limitation of action, they are indeed two different but related concepts.²⁷ Actually, the express call of Art 1169 of our Civil Code for the application of limitation rules in matters of usucaption²⁸ and the indiscriminate use of the term ‘*Yirga*’ for both concepts under the Amharic version of the Civil Code may create confusion in demarcating a clear line between the two. However, in the case of *Abdulle Mohammed v Zebenay Haile*, the Cassation Bench decided that the rule of limitation is different from a rule on which the right of ownership may be acquired by long possession (usucaption).²⁹

Shifting to the issue of the rationale for a statute of limitation, one can provide different rationales that amplify the importance of adopting limitations of actions though the justifications may be different depending upon the nature of cases or the policy objectives associated with the claims at hand.³⁰ Regarding civil periods of limitations of substantive claims, the justifications can be seen from the angles of both plaintiff’s and defendant’s rights as beneficiaries of the rule. In this regard, firstly, limitation periods are justified with a view to protect creditor’s right in particular and the integrity of judicial decision making in general. Since the interest, as well as the evidentiary capacity, of the creditor to establish his case is presumed to be weakened with the

²⁶ For example, from the wordings of Art 1150(1), Art 1366 and Art 1367 of the Civil Code, which used the term ‘prescription’, it seems that the Code is intended to use such term to connote the concept of *usucaption* or acquisitive prescription rather than limitation although the Amharic version of the Code used the same term ‘*yirga*’ for both concepts indifferently. On the other hand, from the usage of the term ‘prescription’ in some other provisions of the Civil Code (for example Art 1192, 1382 and 1639), one can observe that the Code also used the same term to imply the concept of period of limitation, showing the inconsistent usage of the term in our Civil Code.

²⁷ T. Teshome, *supra* note 5, p.181.

²⁸ See Art 1169 of the Civil Code which referred to Art 1852-1856 of the same Code.

²⁹ See *Abdulle Mohammed v Zebenay Haile*, ‘*Decisions of the Federal Supreme Court Cassation Division*’, CFN 53328, Vol. 11, Tikimt 18, 2003 E.C., pp. 536-538. Here, the Court argued that unlike the mode of acquiring ownership right by long possession (usucaption), limitation is a rule on which a law suit may be barred due to the mere fact of untimely filing. The person who acquired the immovable property by usucaption may not defend the suit brought against him by merely showing the lapse of the period. Beside the lapse of the period, he has to defend the suit and establish his ownership right by proving the fact that he has paid the tax relating to the ownership of the immovable property for 15 consecutive years as lay down in Art 1168 of the Civil Code.

³⁰ J. Mosher, *supra* note 7, pp.184-192 where the justifications for period of limitation are discussed under three categories, diligence, repose (certainty) and evidentiary.

passage of time³¹, the existence of a time limit may serve as ‘alarm clock’ that warns the dormant creditor to exercise his right in due time before the evidentiary capacity thereto deteriorates.³²

Moreover, due to the large possibility of the production of false evidence by the creditor on the one hand and the lessened capacity of the debtor to defend the same due to the length of time passed, on the other hand, stale claims raise the possibility in which the court will be required to decide upon an incomplete and/or inaccurate factual records compromising the integrity of its decision-making.³³ Thus, in this regard, the statute of limitation is designed to ensure that justice is done, since the danger of innocent parties being convicted is considerably reduced.

At this juncture, some argue that the barring of stale and forgotten rights under the rule of limitation and according a better concern and protection for the newly achieved ones would play a significant role in protecting the social peace and security in a sustainable manner and to minimize the disrupting effects of unsettled claims on commercial transactions.³⁴ From this point of view, limitation rules are also designed to prevent fraudulent and stale claims from arising after all evidence has been lost or after the facts have become obscure through the passage of time or the defective memory, death or disappearance of witnesses.³⁵

Secondly, the justification for a period of limitation may lie on the widely accepted view that the law shall stand to protect the right of the active debtor rather than the dormant creditor.³⁶ The defendants should not be worried forever due to the inaction or delay of the plaintiff in exercising his right; therefore, the former has to be relieved from his liability at one point via the defense of limitation.³⁷ While acknowledging that a limitation period runs against the interest of the plaintiff, proponents of limitation periods argue that the defense of limitation protects a variety of interests shared by defendants as a group. Thus, one can say that limitation periods have been largely shaped by the interests of the defendant.³⁸

³¹ T. Teshome, *supra* note 5, p.181.

³² P. George, *supra* note 17, p.452

³³ J. Mosher, *supra* note 7, p.190.

³⁴ Planiol, Marcel (1939) in Collaboration with J. Ripert, ‘*Traite Elementaire de Droit Civil*’, Translated by the Louisiana State Law Institute, Vol.2, Part 1 and 2, 11th ed, p.345.

³⁵ Alan Rosenfield (1989), ‘*The Statute of Limitations Barrier in Childhood Sexual Abuse Cases: The Equitable Estoppel Remedy*’, 12 Harv.Women’s LJ, p. 206.

³⁶ P. George, *supra* note 17, p.452.

³⁷ T. Teshome, *supra* note 5, p.181.

³⁸ J. Mosher, *supra* note 7, p.169.

In conclusion, the purpose of a statute of limitation is ensuring that the legal claims are pursued in a timely fashion. This serves two purposes. First, by providing a set time frame within which claims may be pursued, a statute of limitations provides a sense of predictability and finality to disputes. Second, it is easier to gather evidence on events that have happened recently than it is for events that have taken place years ago.³⁹

2. Rationale for Adopting Different Rules and Length of Periods of Limitation

The rules governing limitation of actions and the amount of time prescribed therein often vary depending upon the nature of cases as civil vis-à-vis criminal and substantive vis-à-vis procedural.⁴⁰ While recognizing the adverse effects of criminal violations on the state and the society (unlike civil cases where the effects of the violation limited to the victim alone), legal scholars argue in favor of longer criminal period of limitation that increases with the seriousness of the crime charged and the degree of the sentence passed.⁴¹ Accordingly, it is common to observe longer periods of limitation in criminal cases than in civil cases with a view to ensure a wide opportunity in which unnoticed crimes could be charged and thereby narrow down the possibility in which criminals may evade punishments under the benefit of shorter limitation periods.⁴² There are also cases where the criminal liability of persons could not be barred by

³⁹ Kok, *supra* note 6, p.28.

⁴⁰ J. Mosher, *supra* note 7, p.182.

⁴¹ M. Clausmitzer, *supra* note 4, p.479. However, this does not mean that civil periods of limitation should be too short. Rather, a statute of limitation governing civil suits must afford a reasonable period in which an action can be brought. This is because the statute of limitation would be unfair and against the constitutional right of access to justice if it immediately curtails an existing remedy or provides so little time that deprives an individual of a reasonable opportunity to start a law suit.

⁴² Charles Doyle (2012), ‘*Statute of Limitation in Federal Criminal Cases: An overview*’, Congressional Research Service, p.3. In this regard, for example the “United Nation Convention against Corruption” required state parties to fix a long period of limitation in their domestic laws for corruption related crimes (See Art 29 of the United Nations Convention Against Corruption, General Assembly Resolution 58/4 OF 31 October, 2003). However, with respect to allowing longer period of time for criminal cases, one may ask the issue of evidence which could be deteriorated with the passage of time. Nevertheless, unlike the civil cases where the task of collection and arrangement of evidences are handled by individuals, in criminal cases such activities are conducted by government institutions; having systematic data handling mechanisms. Thus, unlike civil cases, the chance of losing evidences collected against the accused person is too minimal in criminal cases since such evidences are on safe hands. Furthermore, the evidences deposited and stored in such manner (for example, the deposition of a witness taken at preliminary inquiry or the statement made in police investigation) may be put in evidence before the trial court even if the witness is dead or insane, cannot be found, or absent with the passage of time (See for example, Art 144 and 145 of the Criminal Procedure Code of Ethiopia). Therefore, at least from the side of the public prosecutor, adopting longer period of limitation in criminal cases neither entail risk of losing evidences nor hinder the prosecutor to put such depositions in evidence before the trial court. However, from the side of the accused person, the adoption of longer period of limitations for prosecution would be prejudicial to him since it reduces the chance of producing defense evidences and thereby challenge the evidences brought against him. Nevertheless, I believe that the interest of the accused person in this regard shall be sacrifice for the sake of public interest.

period of limitation depending upon the seriousness of the crime⁴³ and the specific policy reasons of the country.⁴⁴ The adoption of such exclusionary rules are intended to avoid the instances in which serious criminals may go unnoticed for certain years and then be safe from prosecution against the interest of justice.⁴⁵

When we examine the Ethiopian Criminal Code in this regard, it provides limitation periods ranging from three years up to twenty five years and five years up to thirty years for prosecution and sentencing claims respectively depending on the gravity of the crime committed⁴⁶, which are relatively long time limits compared to its civil counterpart as laid down under the Civil Code and other civil laws of the country.⁴⁷ On the other hand, unlike civil cases where the court shall not regard the limitation unless pleaded⁴⁸, in criminal cases the appropriate judicial or executive authorities are required to consider the barring of the charge or sentence by their own motion (*sua sponte*) with a view to protect the defendant's right of defense from being jeopardized by dormant charges.⁴⁹ Thus, one can say that the rules of limitation in criminal cases are designed in the manner that compromised the two sides of interests, the deterrence purpose of the criminal law (that could be achieved partly through the provision of longer periods of limitation for charging and sentencing) on the one hand, and the protection of the defendant's interest from

⁴³ For instance, by way of custom of international law, genocide, crime against humanity, and war crimes are usually not subject to statute of limitations. This custom has been codified in a number of multilateral treaties [See for example, the "Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity", G.A.res.2391 (XXIII), Annex, 23U.N. GAOR Supp.(No.18), U.N. Doc. A /7218(1968), entered in to force Nov.11, 1970], Art 40. Similarly, in Ethiopia Art 28(1) of the FDRE Constitution excluded the criminal liability of persons who commit crimes against humanity, such as genocide, summary executions, forcible disappearances or torture from the subject of limitation.

⁴⁴For instance, in the United States 'fraud upon the court' and 'heinous crimes' (crimes that are considered exceptionally heinous by the society like a first degree murder) have no statute of limitation (See Kok, *supra note* 6, p. 45).Moreover, one can notice how a 30-year limitation period for murder in the Federal Republic of Germany had generated controversy as to its applicability to "Nazi crimes" where the abolishment of period of limitation for prosecuting Nazi crimes was favored by most legal scholars. For more on the issue see M. Clausmitzer, *supra note* 4, pp. 473-479.

⁴⁵ C. Doyle, *supra note* 42, p.2.

⁴⁶ See Art 217 and 224 of the Criminal Code of the FDRE, Proclamation No. 414/2004, 9th of May, 2005, Addis Ababa (hereinafter the Criminal Code), which provide ranges of periods of limitation for criminal prosecutions and penalties respectively.

⁴⁷ Currently the fifteen- year period provided under Art 1000 (2) of the Civil Code can be considered as a maximum period of limitation in civil case. And the ten -year period of limitation provided under Art 1845 of the same Code is the second maximum period of limitation.

⁴⁸ Art 1856 (2) of the Civil Code.

⁴⁹ Art 216(3) and Art 223(2) of the Criminal Code of Ethiopia. See also Art 42(1) (c) of the Criminal Procedure Code which required the public prosecutor to refuse proceedings where the prosecution is barred by limitation.

being violated by dormant charges (by providing a rule where the court is bound to plead limitation by its own motion) on the other hand.

However, whatever the purpose of providing limitation periods and the length of time limits stipulated thereto, it is necessary at the outset of any new civil or criminal claim to determine whether it has been barred by a limitation or not. That is why the defense that the suit or the charge has been barred by limitation is provided as a ground of preliminary objection in both civil⁵⁰ and criminal⁵¹ cases.

The rules of limitation and the length of time limits may also vary depending on the substantive or procedural nature of the limitation periods. The length and the applicable rules of limitation in procedural cases are designed in a manner that does not distort the purpose of procedural laws relating with speedy trial and saving the golden time of the court.⁵² Accordingly, the rules applied to substantive periods of limitation may not necessarily apply to procedural periods of limitation. For example, regarding periods of limitation stipulated in procedural laws, the court shall raise the barring of limitation by its own motion even though it has not been pleaded by the litigant parties.⁵³

Moreover, with a view to encourage the early settlements of court litigations, shorter limitation periods are often stipulated in procedural laws to govern procedural related claims in court proceedings compared to substantive laws. The 1965 Civil Procedure Code of Ethiopia, for instance provides two main type of period of limitations: for appeal⁵⁴ and execution⁵⁵ claims in addition to the time limits stipulated therein to govern different kinds of procedural claims in relation to court proceedings.⁵⁶ However, in the manner that goes with the purpose of procedural laws, almost all time limits stipulated in the Ethiopian Civil Procedure Code are relatively short; ranging from a few days up to months except for when the ten year limitation period is fixed for

⁵⁰ Art 244(2)(f) of the Civil Procedure Code of Ethiopia.

⁵¹ Art 130(2) (c) of the Criminal Procedure Code of Ethiopia.

⁵² A. Sedler (1968), *'Ethiopian Civil Procedure'*, Faculty of law, Haile Sellasie University, Addis Ababa, p.2. He provided that the purpose of procedure is to insure that the legal disputes will be handled in a fair and orderly way and as expeditiously and economically as possible

⁵³ See *Gadise Arega v. Werkantifu Bekele (CFN 17361, 'Decisions of Federal Supreme Court Cassation Division'*, Vol. 1, Hamle 25, 1997 EC.).

⁵⁴ See for example Art 323 (2) and Art 306 (2) of the Civil Procedure Code, Art 22 (4) of the Federal Courts Proclamation No. 25/1996, and Art 138 (3) of the Labor Proc. No. 377/2003 which provide short periods for different kinds of appeals.

⁵⁵ See Art 384 of Civil Procedure Code which stipulate the ten-year period of limitation.

⁵⁶ See for example, Art 49, 53, 301(1), 302 (1) (b), 306 (2), 329(1), 340 (2) and 355 (2) of the Civil Procedure Code.

the application of the execution of judgment by the judgment holder.⁵⁷ We can also find such kinds of shorter periods of limitation in our Criminal Procedure Code too.⁵⁸

Apart from the existence of differences in the length of periods of limitation depending upon the civil, criminal, substantive or procedural nature of cases, one can also observe such differences among civil periods of limitation stipulated for different substantive claims. Here it is important to note that the adoption of different civil periods of limitation with different length of time limits are not incidental. Rather, the legislatures have reasons while fixing shorter or longer periods of limitation for different types of civil claims. Even though civil laws often provide short period of limitations, the length of the time limits may be varied depending upon the particular type of cause of action, the nature of the claim and the particular objective of the legal regime governing the claim at hand.⁵⁹

Depending upon the nature of the cause of action and the possible means of proof, the Ethiopian Civil Code for instance stipulated short period of limitation for extra contractual/tort claims compared to contractual claims.⁶⁰ As argued by the drafter of the Ethiopian Civil Code, the justification for adopting a short period of limitation in tort cases is related to the origin of tort liability and the means of proving it.⁶¹ Although the fact that the less reliable evidence could be produced, the longer the time that has passed since the origin of cause of action, works for all cases; it is more prevalent in tort cases where the origin of liability do not presuppose any written

⁵⁷ The rationale behind that the Civil Procedure Code provides such a long period of limitation for execution of judgment in contrast with other procedural time limits may be attributed to different reasons. First, the substantive rights of the judgment holder recognized under the substantive law would be at stake if a short period of limitation had been stipulated for execution of judgments. This is because the recognition of one's right under a given court judgment does not guarantee its enforcement unless the law provide a sufficient time with in which the judgment holder can enforce his rights. Second, since execution claims are an independent claims demanded after the end of the court proceeding, the notion of speedy trial reflected in procedural laws cannot be violated due to the stipulation of long period of limitation for execution of judgment unlike other procedural claims brought by the litigant parties to do things in relation with court proceedings while the case is pending. Moreover, as ordinary type of civil obligations a court judgment creates an obligation on the judgment debtor to allow the execution of the same. Accordingly, execution claims can be considered as substantive rights of the judgment holder than procedural rights which further justify longer time limits for execution of judgment.

⁵⁸ See for example, Art 165(3), 187(1) (2) and Art 198 of the Criminal Procedure Code.

⁵⁹ J. Mosher, *supra* note 7, p.182.

⁶⁰ See the two-year period of limitation stipulated for tort based claims under Art 2143 (1) of the Civil Code and the ten year general period of limitation stipulated for contractual based claims under Art 1845 of the same Code.

⁶¹ See *Bekele Tsegaye v. ETSO Trading Company* (1984), Supreme Court Law Report, Vol. 1, Addis Ababa, 1990 G.C., Ethiopia, p.19-21. In the instant case the former Supreme Court argued (by referring to the commentary written by Reni David, the drafter of the 1960 Civil Code of Ethiopian) that the justification behind the stipulation of short period of limitation for extra contractual claims under Art 2143 of the Civil Code (i.e. two year) is due to the absence of written documents to prove the case and its reliance on witness testimonies as the usual means of proof where the evidentiary capacity and the credibility thereof would be reduced with the passage of time.

agreement unlike the case of contract. As a result of the absence of written documents that could be produced to prove tort claims, victims have been forced to rely solely on oral evidences where the weight and credibility of witness testimonies are usually deteriorates with the passage of time. That is why the Civil Code provides a two-year period of limitation for extra- contractual claims; this is relatively short time limit compared to the ten year GPoL stipulated to govern contractual related claims.

Moreover, depending upon the specific objectives of the law governing the relations, a short period of limitation may be stipulated with a view to encourage early settlements of disputes so that the disrupting effects of unsettled claims on commercial intercourse would be minimized.⁶² Consequently, it is also common to observe short limitation periods under the Ethiopian labour and commercial related laws.⁶³

Therefore, from the aforementioned discussions, one can understand the importance of taking certain factors into consideration in the interpretation and determination of the scope of application of a given period of limitation which *inter alia* includes the types of cause of action and the general policy objective of the special law at hand.⁶⁴As will be discussed later, such considerations would be used to reduce the misapplication of limitation periods and to find the true intension of the legislature.

3. Determinants in Identifying the Appropriate Period of Limitation in Civil Cases in Ethiopia

The task of determining the appropriate periods of limitation in civil cases in Ethiopia is not always easy. As we can understand from different provisions of civil laws, the determination of the applicable period of limitation in civil cases *inter alia* depends upon the type of cause of action, the nature of the case at hand and the form of the relief sought, unlike the criminal case where the Criminal Code of Ethiopia provides the general rules and principles governing

⁶² J. Mosher, *supra* note7, p.186.

⁶³ For instance, the majority of period of limitations stipulated in the Commercial Code of the Empire of Ethiopia of 1960 (hereinafter the Commercial Code of Ethiopia) and Labor Proc. No. 377/2003 are one and less than one year.

⁶⁴ Nigel P. Gravells (1978), '*Time Limit Clauses and Judicial Review: The Relevance of Context*', the modern Law Review, Vol. 41, p.388.

limitation periods of prosecutions and penalties based on the gravity of the crime and the sentence thereof rather than the individual kind of crime.⁶⁵

The stipulation of different limitation periods for contractual, extra contractual, property and succession related claims evidence the fact that the ‘type of cause of action’ has been used as a litmus paper in categorizing and fixing limitation periods in civil cases.⁶⁶ Beside the type of cause of action, the individual type of the case where a given claim can be categorized needs to be identified to determine the applicable period of limitation. Once a contractual obligation has been identified as a cause of action, identifying the nature of the case at hand, for example, as sale of movables, sale of immovable, donation or labour is important to identify the controlling law of limitation. Moreover, since special limitation periods, if any, are often fixed by law depending on the individual types of claims, identifying the form of the relief sought has paramount importance in determining the controlling period of limitation. For example, the time limits stipulated in Art 2298 and 2892 (3) of the Civil Code are designed to apply for the specific types of claims; namely, warranty related and forced performance claims by the buyer of movable and immovable property respectively. Similarly, different periods of limitation have been fixed in the labour law depending on the form of the relief sought.⁶⁷ These show a period fixed for one type of claim may not necessarily apply for other related claims although they emanate from the same cause of action.

Moreover, even though special periods of limitation are often fixed by law depending upon the individual type of claim or the form of the relief sought, the applicability or otherwise of a given period of limitation may also be subject to certain ‘*conditions of application*’ that further require the court to examine whether or not the claim at hand fits with the attached statutory conditions or terms before applying a given legally fixed period of limitation. As a result, a given limitation provision may be disregarded on the ground of statutory conditions if the claim at hand does not fit with the stipulated ‘*conditions*’.⁶⁸ The need to consider the above determinants can evident

⁶⁵ Art 217 and Art 224 of the Criminal Code of Ethiopia.

⁶⁶ For example, see Art 1845 and 2143 of the Civil Code which provide a general period of limitation for contractual and extra contractual related claims respectively.

⁶⁷ Art 162(2) and (3) of the Labour Proc. No. 377/2003.

⁶⁸ In this regard, there are certain cassation cases where the applicability of special periods of limitation has been disregarded by the court on the ground of statutory conditions. See for example the binding interpretations given by the Federal Supreme Court cassation division in file numbers 25664, 42346 and 38935 regarding the scope of application of the limitation periods provided in Art 1000, Art 2441(1) and Art 2892(3) of the Civil Code respectively.

how the task of determining the controlling period of limitation may be a difficult task in civil cases especially where the legal provisions are not clear regarding the conditions required to be fulfilled to confidently apply the period therein.

4. Determination of Period of Limitation in Civil Cases in Ethiopia: Gaps and Challenges

The legal framework governing civil period of limitation in Ethiopia has a number of lacunas⁶⁹ compared to criminal cases.⁷⁰ As said before, the existence of a number of cassation decisions on different aspects of limitation reveal the controversial nature of the issue in civil cases. At this juncture, one can pinpoint different possible factors that may contribute to the existing gaps in the legal regime governing civil periods of limitation in Ethiopia. The way that periods of limitations are organized in our civil laws, the absence of rules that clearly provide the dimension and scope of application of the GPoL and the lack of exclusionary rules that help to identify lists of claims which are exempted from the subject of limitation are among such factors that pave the

⁶⁹In addition to the lacunas to be discussed in due course throughout the body of the article, one can at least identify the following gaps in the legal regime governing limitation of actions in civil cases in Ethiopia. (1) The general provisions of the Civil Code dealing about ‘limitation of actions’ (Art 1845-1856 of the Civil Code) do not provide or recognized exceptional circumstances where some of such provisions may not be applied, by taking into account the special nature of the claim or the objectives of the special laws governing such claims, making their blind application via Art 1676 and 1677 to be absurd with respect to certain cases. (2) Except the argument that can be made based on Art 1676 and 1677 of the Civil Code, the special laws and their respective limitation provisions, if any, (as found in different books of the Civil Code and in other separate civil legislations) do not often make an explicit or implied references to such Civil Code provisions dealing about ‘limitation of actions’ including the ten year period of limitation stipulated under Art 1845. These cumulatively may erode the confidence of the interpreter/judge to confidently apply such provisions to other special cases particularly when their application seems absurd in the circumstances of the case at hand. (3) In certain instances, one can observe ‘multiplicity/overlapping of periods of limitations’. In this regard, for example, it is not clear as to whether the two year period of limitation stipulated under Art 1810(1) or the ten year period stipulated under Art 1845 of the Civil Code will apply with respect to actions for the invalidations of the contract since both provisions are found in the general contract part of the Civil Code.(4) Since some of the subsequent implementation provisions following Art 1845 of the Civil Code are designed by taking into account the ten year period of limitation, their general application may be absurd. For example, while providing the length of period that shall begin to run upon each interruption, Art 1852(2) of the Civil Code state that ‘[s]uch period shall be of ten year where the debt has been admitted in writing or established by a judgment’[.] According to the blind application of this provision to other cases for which the special laws provide a shorter periods of limitation on the basis of Art 1676 and 1677, this means it is the ten year period that shall run upon interruption of, for example, a three-months special period of limitation stipulated under special laws, making it application absurd. (5) Moreover, Art 1852(1) does not provide the possible numbers of interruptions allowed. Rather it simply states, ‘[A] new period of limitation shall begin to run upon each interruption.’, allowing fresh ten-year period of limitation to begin to run upon each interruption unlimitedly. And this is obviously absurd and even against the very notion of limitation. At this juncture, Art 164 (3) of the Labour Proc.No. 377/2003 for example, limited the number of possible interruptions to three, stating that ‘...a period of limitation interrupted on such ground may not be interrupted on such ground may not be interrupted for more than three times in the aggregate.’

⁷⁰ See Art 216-228 of the Criminal Code which provides clear and detailed rules governing limitations of actions in criminal cases concerning prosecution and sentencing.

way for the inconsistent application or interpretation of limitation provisions in general and Art 1845 of the Civil Code in particular.

4.1. The Organization of Periods of Limitation

Limitation periods generally are issues of law, in common law and civil law legal systems, even though the manner of their organization is different.⁷¹ In most common law jurisdictions, limitation periods in civil cases are imposed by a separate statute or an enactment often named as '*Limitation Acts or statutes of limitation*'.⁷² In contrast, in civil law jurisdictions, limitation provisions are typically part of the Civil Code and are often known collectively as period of prescription.⁷³

In the former case, those limitation statutes have detailed provisions that provide conditions under which a legally fixed period of limitations can be enforced, suspended, interrupted and waived. Besides having those general execution provisions, the statutes often annexed schedules of periods of limitation that contains the description of the suits (based on category of cause of action and the types of reliefs sought), the applicable period of limitation thereto and the time from which the period begins to run.⁷⁴

It is patent that a separate statute of limitation would make the task of finding the appropriate periods of limitation and the enforcement rules thereto easy for judges, advocates and litigant parties.⁷⁵ One can find a wide range of rules under a separate limitation statute with better clarity and exhaustion than under the scattered limitation provisions as stipulated in different legal instruments. Consequently, a separate statute of limitation will reduce the chance where important rules of limitation may be overlooked by the legislature and thereby facilitates the instances where the appropriate periods of limitation can be determined with reasonable certainty

⁷¹ Juha Raitio (2008), '*Legal Certainty, non- Retroactivity and Periods of Limitation in EU Law*', Journal of Legislation, Vol.2, issue 1, p. 2.

⁷² Vince Morabito (2005), '*Statutory Limitation Periods and the traditional Representative Action Procedure*', Oxford University Common Wealth Law Journal, Vol. 5, Issue 1, p.114.

⁷³ Kok, *supra* note 6, p.42.

⁷⁴ A ME Gee (1990), '*A Critical Analysis of the English law of Limitation Periods*', p. 123. For instance, in England limitation periods and the execution rules attached thereto are imposed by statute, primarily the Limitation Act 1980 (LA 1980) which provides different limitation periods for different types of actions including a claim for negligence, tort, contract, a claim for the recovery of land, proceeds of sale of land or money secured by a mortgage or charge, a claim for arrears of rent, an action claiming personal estate of a deceased person and the like. Moreover, beside those limitation periods provided by LA 1980, there are also other acts providing limitation periods for certain kinds of actions. For example, limitation period for product liability claims is provided under Consumer Protection Act 1987.

⁷⁵ Kok, *supra* note 6, p.43.

and clarity.⁷⁶ Moreover, the adoption of uniform a rule of limitation could minimize the adverse effects of the uncertainty of the law of limitation on commercial transactions and thereby contribute for the development of trade.⁷⁷

However, it is important to note, that even though a separate statute of limitations may set up limitation periods for many different types of claims, it does not mean that it can provide a comprehensive limitation rule. As a result of this, the gaps in a given limitation statutes are often filled by special pieces of legislations which may set the limitation period for certain types of special claims. For instance, the Limitation Act of 1980 is a prominent civil statute of limitation in England. However, since it is not all encompassing, limitation periods have been provided by other statutes for certain types of special claims.⁷⁸

When we examine the organization of civil periods of limitation in Ethiopia, unlike the common law legal system, we cannot find a separate statute of limitation enacted to govern a wide range of limitation of actions in civil cases. Rather, provisions prescribing periods of limitation are found throughout different regional and federal laws, in a scattered manner, along with other provisions. Consequently, different periods of limitation are part of our Civil Code⁷⁹, Commercial Code⁸⁰ and other prominent civil laws⁸¹ of the country depending on the types of cause of action and the relief sought, though there are still a number of special claims for which special periods are not yet fixed by law.

Among the substantive Ethiopian laws of civil cases, relatively detailed provisions governing limitations of actions are stipulated in the general contract part of the Civil Code under the section '*limitation of actions*'⁸² followed by the Labor Proclamation where the latter provides

⁷⁶ Ibid.

⁷⁷ See for instance, '*Convention on the Limitation Period in the International Sale of Goods*' (The 1974 Limitation Convention) as amended by the '*Protocol amending the Convention on the Limitation Period in the International Sale of Goods*' (The 1980 Protocol), United Nations on International Trade Law, New York 2012, which required state parties to adopt uniform rules of limitation with a view to facilitate the development of world trade.

⁷⁸ See A ME Gee, *supra* note 74.

⁷⁹ See for example, the general rules stipulated in the general contract part of the Civil Code to govern limitations of actions in contractual claims (Art 1845-1856 of the Civil Code) and other special periods stipulated under different books of the Civil Code (for example see Art 172, 338, 402 (2), 973, 993, 1000, 1149, 1192, 1810, 2143, 2187 (2), 2298 and Art 2892 (3) of the Civil Code).

⁸⁰ See for example, Art 607, 642, 674, 807(2), 817 (2) (3), 855, and Art 881 (3) of the Commercial Code of Ethiopia.

⁸¹ For example, special periods of limitations are provided under Art 162 and Art 71 of the Labor Proc. No. 377/2003 and Income Tax Proclamation No. 286/2002 respectively. Similarly, Art 318 of the Federal Revised Family Code provides special period of limitation.

⁸² Art 1845-1856 of the Civil Code.

particular provisions governing period of limitation in labor disputes.⁸³ Whereas when we look into other civil laws of the country, we cannot find particular rules, which provide how the given periods of limitation fixed to govern particular categories of claims may be raised, enforced, suspended, interrupted or waived. Usually only one or two limitation provisions, if any, have been incorporated under different categories of civil laws, which often provide just the length of a time limit⁸⁴ without stipulating the particular enforcement rules thereto.

The failure of special laws to provide their own particular enforcement conditions for the given category of claims coupled with the absence of a clearly stipulated general enforcement rules to be applied to all civil periods of limitation have been consequently creating confusion about the general applicability or otherwise of those limitation provisions stipulated in the general contract part of the Civil Code⁸⁵ to other special categories of claims in certain instances.⁸⁶

Moreover, due to the absence of a clearly stipulated GPoL to be applied to all civil claims, on one hand, and due to the lack of exclusionary rules that provides lists of exempted claims from the subject of limitation, on the other hand, the scope of application of the ten- year GPoL stipulated in Art 1845 of the Civil Code had been subjected to different arguments. This may likely pave the way for its inconsistent and inappropriate application.

⁸³ Art 162-166 of the Labor Proc. No. 377/2003.

⁸⁴ For instance, [Art 973, Art 974(2) and Art 1000 of the Civil Code] and [Art 1149(2), Art 1158(3), Art 1165(2) and Art 1192 of the Civil Code] are among the limitation provisions which provides different periods of limitation to govern succession and property related claims respectively. We can also find similar limitation provisions in other civil laws of the country. But none of them provides nether their own particular rules of enforcement nor explicitly referred to limitation provisions stipulated for contractual obligations as stipulated on Art 1846-1856 of the Civil Code.

⁸⁵ Art 1846-1856 of the Civil Code.

⁸⁶ Those enforcement provisions ranging from Art 1846 up to Art 1856 of the Civil Code *inter alia*, deals about the conditions as to how the period stipulated in Art 1845 may be raised, enforced, interrupted or waived. Since Art 1845 provides only about the general applicability of the ten year period of limitation, the question may arise as to the scope of application of those subsequent execution provisions to enforce other special periods of limitation fixed in other specific laws. For example, the Cassation Decision given under CFN 47784 excludes the application of Art 1853 of the Civil Code on litigations arising from employment relationship by taking into consideration the special nature of the Labour law governing the relationship at hand (the employer-employee relationship). This means, according to the decision, the employee cannot use the rule provided under Art 1853 to set aside a defense of limitation raised by the employer in labor disputes [See *Commercial Bank of Ethiopia Vs Alemtehay Ayana* (CFN 47784, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol 9, Tahisas 20, 2002 EC)]. However, saving certain exceptional cases, one may argue that such limitation provisions (Art 1846-1856 of the Civil Code) could be used to enforce all periods of limitation in civil cases irrespective of the source of obligation unless a contrary rule is provided by special laws (See Art 1676 and Art 1677 of the Civil Code).

4.2. The Dimension and Scope of Application of the Ten Year GPoL

Due to the various numbers of claims and the variation of special periods of limitation with changing conditions (depending upon the types of cause of action, the types of claim or the individual form of the relief sought), it is difficult for the legislature to stipulate special periods of limitation for each and every type of claim, making the existence of claims without special periods of limitation inevitable. The situation, however, would be more prevalent in the absence of a separate statute of limitation and in the system where special periods are stipulated in a scattered manner like the case of Ethiopia. Consequently, one cannot find relatively comprehensive periods of limitation for a number of civil claims in civil cases from the existing few and scattered legal provisions which, in turn, poses a question about whether such claims are subject to limitation or not. The situation would be more difficult in the absence of rules that clearly stipulate a GPoL, the scope and dimension of its application.

A. Divergent Arguments about the Ten Year GPoL: Absurdity of its Application to all Civil Claims

There have been different lines of arguments about whether the law clearly stipulated a general period of limitation or not that could be applied to all civil claims irrespective of the nature or type of obligations. Particularly, before the time when the Cassation Division of the Federal Supreme Court gave its binding interpretation⁸⁷ regarding the scope of its application, there were legal professionals who argued that the ten year limitation period stipulated in Art 1845 of the Civil Code is designed to govern only contractual claims so that the ten year period cannot be considered as a GPoL to all civil claims.⁸⁸

The proponents of the above argument asserted that the specific content of Art 1845 by itself reveal the fact that the period specified therein is intended to govern only contractual claims which are related with the performance, non- performance or invalidation of the contract. The argument urges for the isolated reading of the provision, insisting that Art 1677(1) of the Civil Code shall be interpreted as if it only implies to the possible application of other provisions of

⁸⁷ See Art 10(4) of Federal Courts Proclamation No 25/1996 as added by the amendment clause of Art 2 of Federal Courts Proclamation Re Amendment Proclamation No 454/2005 which established the '*doctrine of precedent*' where interpretations or decisions given by the Federal Supreme Court Cassation Division would have a binding effect on lower courts entertaining similar cases.

⁸⁸ T. Teshome, *supra note* 5, p.186. This argument seems emanated from the isolated reading of the Provision (Art 1845) while ignoring Art 1676 and 1677 of the Civil Code.

the title other than the provision that fix a period of limitation (i.e. Art 1845). Thus, according to this view, there is no provision that principally requires every type of civil claim to be subjected to limitation in our civil laws unlike the criminal case where the Criminal Code clearly provides a rule that makes all criminal prosecutions and penalties subject to limitation unless otherwise exclusionary rules are stipulated by law.⁸⁹ They further argued that even if Art 1845 is said to be implicated under the general rule of Art 1677(1), the provision is still open to interpretation as to what kinds of obligations could be constituted in the meaning of the term ‘*other obligations other than contractual obligations*’, which in turn creates difficulty in confidently determining whether the ten year GPoL is really appropriate for all civil claims whose specific laws are silent about the issue.

However, based on the policy objectives justifying periods of limitation, the above argument does not hold water. Except for certain instances where the application of the ten year period of limitation could be contested, it is a shared view that the ambit of its application can extend to obligations other than contractual ones as long as special periods of limitations have not been fixed by law.⁹⁰

As revealed by different decisions of the Federal Supreme Court Cassation Division⁹¹, the ten year period of limitation has been currently taken as a GPoL in civil cases under two dimensions. Firstly, based on the wordings of Art 1845 of the Civil Code, the ten year period of limitation has been applied to all ‘*contractual claims*’ irrespective of the nature of the contract or the parties involved.⁹² Secondly, based on the cumulative reading of Art 1677 (1) and Art 1845 of the Civil

⁸⁹ Art 216(1) of the Criminal Code of Ethiopia.

⁹⁰ T. Teshome, *supra* note 5, p.186.

⁹¹ See for example, *Grma Shiferaw vs. Christian Charity and Development Organization* (CFN 32545, ‘*Decisions of the Federal Supreme Court Cassation Division*’, Vol. 6, p.351, Ginbot 14/2000 EC), *Werknesh Amede vs. Tilahun Amede* (CFN 29363, Cassation Decisions, Vol.8, pp.313-315, Hidar 18, 2001 EC), *Weldesadik Birhanu et al vs. Sintayew Ayalew* (CFN38935, Vol.8, p.343, Megabit 3/ 2001 EC), *Dinke Tedla Vs Abate Chane*(CFN 17937, Vol. 4, p. 80, Megabit 20/1999), *Tegegn Yimam vs. Kasahun Desalegn* (CFN 25664, Vol.6, p. 239, Ginbot 7, 2000 EC), *Heirs of Genet Damte Vs Yilma Asefa et al* (CFN 38152, Vol. 6, p. 268, Miyazia 29/2001), *Yismaw Dires vs. Yibeltal Fikir* (CFN 31748, Vol. 6, p.385, Yekatit 18/2000 EC), and *Hajira Abro vs. Hashim Haji Aleko* (CFN 34940, Vol.8, p.329, Tahisas 28/2001 EC). The Cassation decisions cited above confirmed the general applicability of the ten year period of limitation to civil claims arise from contractual as well as non- contractual obligations. The above decisions show the possibility where the period fixed under Art 1845 of the Civil Code, which is obviously stipulated for contractual related claims, can also apply to other civil claims such as family, succession, property, and others as far as special periods of limitation have not been stipulated by law.

⁹² Art 1976(1) and Art 1845 of the Civil Code. Here, since the provision Art 1845 of the Civil Code is found under the title ‘*contracts in general*’, it directly governs limitations of actions related with different types of special ‘contracts’. Accordingly, this contractual general period of limitation may apply to those contractual claims arises from special contracts for which the law did not fix special periods of limitation. For instance, we can find such

Code; the period has also been applied to other kinds of obligations than contractual obligations.⁹³

At this juncture, it should be noted that the ten year period of limitation should be applicable without affecting special rules stipulated in special laws, if any, in the manner that goes with the prominent rule of interpretation that dictates ‘the *special rule prevail over the general rule*’.⁹⁴ In this regard, the wordings of Art 1845 and Art 1677(2) of the Civil Code forwards two messages. On one hand, it implies the general application of the ten year period to all civil claims unless otherwise special periods of limitations are provided by law.⁹⁵ On the other hand, it implies the non-applicability of the GPoL if ‘*exclusionary rule*’⁹⁶ has been provided by law, exempting certain claims from the subject of limitation which, in turn, return allows the plaintiff to bring his claim at any time irrespective of the time bar. Therefore, before rushing to apply the GPoL, one

special kinds of contracts under Book V of the Ethiopian Civil Code (e.g. contracts relating to the assignment of rights ,contracts for the performance of services, contracts for the custody, use or possession of chattels, contracts relating to immovable, administrative contracts, and those relating with compromise and arbitral submission) and Commercial Code (e.g. insurance contract, contract for hiring business and contract of sale of business).Beside various claims emanated from the above illustrated special types of relations, claims arise from agency and employment relations (as laid down under Book IV, Title XIV of the Civil Code and Labor Proclamation No. 377/2003 respectively) can also be subjected to the ten year period of limitation in the meaning of Art 1845 of the Civil Code, taking into account the special provisions stated in those special legislations.

⁹³ Art 1677(1) Cum with Art 1845 of the Civil Code. Since the Civil Code provisions dealing about ‘*limitation of actions*’ including Art 1845 are part of provisions of ‘*the title*’ in the meaning of Art 1677(1), the door is open to apply the ten- year general period of limitation to all civil claims irrespective of their sources of obligation. According to this argument ascertaining the absence of special periods of limitation is enough to apply the ten- year period to other cases.

⁹⁴ T. Teshome, *supra* note 5, p 183.

⁹⁵ For instance, since the law of sale and sale of immovable provides their own specific limitation periods under Art 2298 and 2892(3) for proceedings based on warranty and action for the forced performance of the contract by the buyer of movable and immovable property respectively, the general period of limitation stipulated under Art 1845 of the Civil Code cannot be applied.

⁹⁶ Even though it is hard to find exhaustive or illustrative lists of exempted claims in our civil laws, the wordings of certain limitation provisions reveal the existence of exclusionary rules. For instance, one can observe what has been stipulated in Art 1850 and Art 1000(2) of the Civil Code. Consequently, based on Art 1850 of the Civil Code one may argue that a creditor whose claim is secured by a pledge may exercise the rights arising out of the pledge at any time notwithstanding that the principal claim is barred by limitation. Similarly, the inheritance claims of family immovable cannot be barred by limitation and can be brought at any time as stipulated under Art 1000(2) of the Civil Code. However, here it should be noted that due to the constitutional provision bestowing the ownership of land to the state and its people coupled with the non- applicability of the concept of ‘*family immovables*’ on buildings, one may say that the application of the instant exclusionary provision has been ceased due to its unconstitutionality. Thus, one may argue that currently there is no actions considered as ‘*actions relates to family immovable*’ in the meaning of Art 1000(2) of the Civil Code upon which the exemption could be applied. For more on the issue see Cassation Decisions given in the case of *Elfnesh Amare vs. Girma Amare* (CFN 34011, “Decisions of the Federal Supreme Court Cassation Division”, Vol. 6, Megabit 25, 2000 E.C.; and *Tsehaynesh Adem and Hailu Sisay vs. Heirs of Eshetu Tesfaye* (CFN 30158, ‘*Decisions of the Federal Supreme Court Cassation Division*’, Vol. 7, Sene 20, 2000 EC.).

should examine the fact that neither special periods nor exclusionary rules have been provided by law.

Nevertheless, as will be discussed later, the author of this article strongly holds that allowing the application of the ten-year period of limitation to all civil claims, by the mere fact that special periods of limitation have not been fixed by law, would be absurd, or at least unfair, with respect to certain kinds of claims. This is particularly true in the condition where the nature of the claim or the very objectives of the specific law governing the claim at hand justifies either short periods of limitation or exemption, as the case may be, rather than the blind application of the ten-year period, which is the second longest civil period of limitation in Ethiopia. In this regard, actually there are certain binding cassation decisions which have disregarded the ten-year period of limitation and instead applied some other alternative periods by analogy or exempted certain claims from the subject of limitation, taking into account, *inter alia*, the very nature of the claim at hand and the purpose of the special law thereof.

B. The Absence of Exclusionary Rules

Unlike civil laws, the Criminal Code provides a general rule that declares all prosecution and execution claims to be a subject of limitation unless expressly exempted.⁹⁷ For instance, Art 28(1) of the FDRE Constitution clearly excludes ‘*crime against humanity*’ from the subject of limitation.⁹⁸ Whereas, it is less likely to find such kind of clearly provided exclusionary rules in our civil laws even though there are provisions ‘*resembles to exclusionary rules*’, which often use the term like ‘*whenever*’⁹⁹ or ‘*at any time*’.¹⁰⁰

⁹⁷Art 216(1) and Art 223(1) of the Criminal Code. Consequently, in criminal cases unless the law expressly excluded certain types of crimes from the subject of limitation, all criminal actions and penalties can easily be categorized and fall under the broad ‘*basket*’ so that there would not be any difficulty in locating the controlling period of limitation.

⁹⁸Art 28(1) of the FDRE Constitution illustrates crimes such as genocide, summary executions, forcible disappearances or torture as examples of “*crime against humanity*”, which shall not be barred by statute of limitation. However, since the above four kind of crimes are just an illustrative example, the exclusionary rule stipulated under Art 28(1) of the Constitution can also be extended to other similar crimes as far as they could be construed as ‘*crimes against humanity*’, as defined or to be defined by international agreements ratified by Ethiopia and by other laws of Ethiopia.

⁹⁹For instance, see Art 1756 (3) of the Civil Code.

¹⁰⁰ For instance, see Art 1062, Art 1168(1) and Art 2837 of the Civil Code. Moreover, even though they are not clearly stipulated, the wordings of Art 338 (2) and Art 2299 (2) of the Civil Code resembles with exclusionary rules. However, there are also cases where the law provides exempted claims in clear terms. For instance, Art 71(3) of the Income Tax Proclamation No. 286/2002 expressly allowed the tax authority to conduct the assessment of tax at any time. It provides that ‘*[I]n case where the tax payer has not declared his income or has submitted a fraudulent*

Due to the absence of exclusionary rules that clearly provide a list of exempted claims, the issue of whether a certain civil claim is a subject of limitation or not has been a point of discussion at different occasions before our courts.¹⁰¹ For instance, the wordings of Art 1756(3) of the Civil Code which says ‘[P]ayment shall be made whenever a party requires the other party to perform his obligations’ seems that such a claim is not subject to limitation. But as confirmed by the cassation decision in file number 32545¹⁰², the provision which applies in the condition in which a time of payment is not fixed in the contract, does not enable a party (the seller) to bring an action for the payment of the price against the other party (the buyer) at any time (i.e. after 10, 25, or 50 years etc.). There cannot be any justifiable reason to assume that the law has intended to exclude the claim for the payment of the price of the good sold from the subject of limitation. Rather, since a special period of limitation has not been fixed by law regarding payment related claims, the ten year GPoL shall apply. And the period shall start to run from the date the right under the contract could be exercised by the seller, which is actually the date when the seller can claim the payment of the price.¹⁰³ As a rule, the seller can actually claim the payment simultaneous with the delivery of the thing where the payment is due on delivery.¹⁰⁴ Therefore, one can say that the seller has to bring his claim for the payment of the price of the good sold under Art 1756(3) of the Civil Code within ten year from the date of delivery. The above

declaration, no time limit provided in any other law shall bar the assessment of the tax by the Tax Authority’, clearly excluding the application of the ten- year general period of limitation.

¹⁰¹At this juncture, a question may arise as to the possible rationales of adopting such exclusionary rules in civil cases. Actually, there is strong public interest in criminal cases justifying such rules. However, unlike criminal cases, it seems difficult to justify the requirement to have such kinds of exclusionary rules in civil cases in the name of ‘public interest’ mainly because of the fact that civil violations are often considered as violations against the victim rather than the state and the society in general, making the application of the notion of ‘public interest’ in civil cases to be minimal. Nevertheless, one can still imagine some of the reasons justifying such exclusionary rules in civil cases or at least allowing the creditor to exercise his right in some other ways that do not contravene with the very concept of limitation. In this regard, the legislator may adopt such exclusionary rules for example, by taking into account the law of ‘equity’ or ‘fairness’, by taking into account the very notion or purpose of period of limitation, or due to some other policy reasons where the objective of the special law governing the claim at hand could be achieved under the rule allowing the claimant thereof to bring such violations at any time.

¹⁰² See *Girma Shiferaw vs. Christian’s Relief Development Agency* (CFN 32545, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 6, Ginbot 14, 2000 EC.)

¹⁰³ The last phrase under Art 1846 of the Civil Code while providing the day when the period of limitation shall start to run (i.e. ‘[T]he period of limitation shall run from the day...when the obligation is due or the rights under the contract could be exercised’) is intended to govern the conditions where the non- performance thereto cannot be determined by the mere observance of the failure of the debtor to perform his obligation on the due date just like the claim of the seller for the payment of the price under Art 1756(3) of the Civil code. Art 1756(3) applies in the condition where the time of payment is not fixed in the contract. So one cannot identify a particular due date from where a seller can demand claims based on the non- performance. That is why Art 1846 of the Civil Code provides another option that the period of limitation may start to run, that is from the day the rights under the contract could be exercised, other than from the day when the obligation is due.

¹⁰⁴ See Art 1756(2), Art 2310 Cum. Art 2278 of the Civil Code.

decision shows the fact that the mere usage of terms like ‘...*whenever*...’ and ‘...*at any time*...’ in a given limitation provision do not necessarily imply exclusionary rules.

On the other hand, there are also cases where provisions consisting of such terms are declared as exclusionary rules, as the case may be, depending upon the particular nature of the contract, the spirit, purpose or content of the legal provisions. For instance, the cassation division gave a binding interpretation that suits demanding the partition of inheritance¹⁰⁵ or termination of antichresis¹⁰⁶ shall not be barred by limitation as proclaimed under Art 1062 and Art 3128(2) of the Civil Code respectively. As we can understand from the above binding cassation decisions, determining the issue of whether the exclusionary rule has been stipulated or not based on the mere observances of statutory terms like ‘*whenever*’ or ‘*at any time*’ may lead us to hasty conclusions. Therefore, given the absence of clearly stipulated exclusionary rules, the issue ought to be determined on case by case bases after examining the intention of the legislator, the spirit, purpose or contents of the law governing the claim at hand.

Shifting to the possible mechanisms for resolving or at least filling the above discussed legal gaps surfaced in the legal framework governing civil periods of limitation in Ethiopia, one may look into two options. The first option is waiting for the legal gaps to be filled over time under the rule of precedent. In this regard, since most of the issues involving period of limitations are issues of law rather than issues of fact, there are chances where the decisions of the lower courts

¹⁰⁵ See *Tsige W/Mriam et al (6 people) vs. Siyum Kifle* (CFN 38533, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 10, Hidar 8, 2002 EC). See also Art 1062 of the Civil Code in tandem with Art 996, 1000(1), 1000(2) and Art 1060 of the Civil Code. In the instant decision, the Cassation Division argued that in the conditions where the heirs of the inheritance had instituted an action of ‘*petitio haereditatis*’ within the required time limit and thereby the succession has been liquidated, each of the co-heirs may at any time require that the partition of the inheritance be effected based on Art 1062 of the Civil Code. The decision also confirmed that since the action brought for *petitio haereditatis* and the action for the partition of the inheritance are two different claims governed by two distinctive legal provisions, the period of limitation stipulated in Art 1000 of the Civil Code for petition *haereditatis* action may not apply to bar the heir’s claim demanding partition of the inheritance property. See also the Cassation decision given in the case of *W/ro Mulushewa Bogale et al vs. Ato Mesfine Bogale* (CFN 44237, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 10, Megabit 20, 2002 E.C.).

¹⁰⁶ See *Niguse Haile and Mamitu Leta vs. Huresa Debela and Lelise Raya*, (CFN 72463, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 13, Megabit 26/2004 E.C.). In this case the court argued that the debtor who delivered his immovable property to the creditor under the contract of antichresis may at any time terminate the antichresis by performing the obligation secured by the antichresis even after the lapse of the time fixed for the payment of the debt as stipulated in Art 3128(2) of the civil code. And if there is no time fixed in the contract for the payment of the obligation, the debtor may at any time terminate the antichresis as far as he is ready to perform his obligation. Moreover, the court argued that there is no legal base where the creditor who has possessed the house secured by the antichresis can be the owner thereof by the mere fact that the debtor, the true owner of the house, is failed to pay his debt for many years. Rather, as provided in Art 3128(1) of the Civil Code, the creditor who is tired of using the house may at any time renounce his right of antichresis (See Art 3128(2) Cum. with Art 3117-3130 of the Civil Code).

on different aspects of periods of limitation involving basic error of law would be corrected by binding decisions of the Federal Supreme Court Cassation Division.

However, though the binding precedents could create a sequence of consistent decisions in similar cases overtime¹⁰⁷, this alone cannot provide a complete solution for the existing legal gaps. Since the cassation bench cannot give a binding legal interpretation through its own initiation unless the alleged errors of laws have been presented to it by litigant parties, it would be difficult to expect each and every type of controversy to be settled under such a system of legal precedent. While waiting for the issues to be exhausted this way, the adjudication of cases, which are not yet covered by cassation decisions, will be subjected to broad judicial discretion, which could be exercised at least in the guess of ‘interpretation’.¹⁰⁸ And such discretionary power exercised under the name of interpretation may in return erode the uniform application of the law on like cases, making the right to have equal treatment before a law and access to justice at stake. Second, given the drawbacks of the precedent system¹⁰⁹ it is more likely to observe inconsistent or wrong interpretations of laws by the cassation division.¹¹⁰ The uncertainty and unpredictability of decisions in turn maximize the possibility that an experienced judge will fall to injustice.¹¹¹

¹⁰⁷ Vincy F. and Francesco Parisi (2006), ‘*Judicial Precedent in Civil Law Systems: A dynamic Analysis*’ International Review of Law and Economics, Vol. 26, p.521.

¹⁰⁸ Here, it should be noted that although the Ethiopian judiciary in general and the Cassation Bench in particular cannot make laws on behalf of the legislature against the principle of separation of power (including the fixing of substantive periods of limitation, which are statutory by nature), practically there are different instances showing little deviation from such principle in the name of interpreting legal rules. A closer encounter with the practice of Ethiopian courts clearly shows that there are considerable unpredictability and uncertainty in case law so much so that identical cases have quite different outcomes (See Kalkidan Abera (2009), ‘*Precedent in the Ethiopian Legal System*’, Ethiopian Journal of Legal Education, Vol. 2, No.1, p. 37). This is also true with respect to cases involving periods of limitations. In this regard, for example from the judicial decisions resulted in the numerous appeals that appear before the court of cassation, one can observe that the lower courts have decided many cases involving periods of limitation contrary to the interpretation of the law, showing the great chance where the lower judiciary may misuse its power of interpretation and there by exercise broad discretion thereof in the manner that seems that they are ‘making laws’ rather than ‘interpreting laws’. Therefore, while waiting numerous controversial issues of limitation to be exhausted through Cassation decision, the adjudication of cases which are not yet covered by cassation decisions may be subjected to judicial discretion, as practically exercised under the guess of ‘interpretation’.

¹⁰⁹ David Vong, ‘*Binding Precedent and the English Judicial Law Making*’, available at <https://www.law.kuleuven.be/jura/art/21n3/vong.pdf>, pp.341-342, last visited January 3, 2015. See also Peter Blume, The Unbearable Lightness of Precedent, available at www.scandinavianlaw.se/pdf/48-2pdf, accessed on December 5, 2014.

¹¹⁰ Workneh Alemnew (2014), ‘*Contract Form Concerning Immovable: Analysis of the Cassation Decisions of the Federal Supreme Court*’, in The Cassation Questions in Ethiopia, a symposium publication by school of law, AAU, pp.167-173.

¹¹¹ Robert A. Sprecher (1947), ‘*The Development of the Doctrine of Stare Decisis*’, p.501.

Therefore, as the second and most appropriate option of filling the existing gaps, the legislature shall come up with a separate and relatively comprehensive statute of limitation rather than waiting for legal precedents to exhaust the controversial issues of limitation. Thereafter, it would be logical to expect the legal gaps to be filled either by cassation decisions or some other statute that would provide special periods of limitation for certain types of special claims.¹¹²

5. Revisiting the Scope of Application of the Ten Year GPoL: Little Judicial Discretion in Determining the Controlling Period of Limitation

5.1. Conditions Justifying the Non-Applicability of Art 1845: Searching for Alternative Periods of Limitation

There are two sides of the argument regarding the scope of application of the ten year GPoL stipulated in Art 1845 of the Civil Code. As mentioned earlier, the first and the widely accepted view favors the general applicability of the ten-year period to all civil claims unless otherwise special periods of limitation or exclusionary rules are stipulated by law. According to this view, the mere failure of the law to provide special periods of limitation neither means that such claims are exempted from the subject of limitation nor that the court has discretion to apply some other period of limitation by analogy. Rather, whenever the law fails to provide a special period of limitation, the ten year GPoL shall apply to all types of civil claims via Art 1676 and Art 1677 of the Civil Code on contractual and non-contractual claims respectively.

According to this argument, allowing the analogical application of some other period of limitation fixed for a certain type of claim to other similar claims, in the absence of express or implied reference made to that effect, would make the purpose of stipulating a GPoL meaningless. It should also be noted that the inconsistency and unpredictability of court decisions would be prevalent in a system where the application or otherwise of limitation predominantly depends on judicial discretion.¹¹³ The arbitrary application of periods of limitation in this regard may also adversely affect the constitutional right of claimants to access justice and the right to equal justice to like cases.

¹¹² Beside those provisions of limitation periods found in different Codes and Proclamations, the writer able to find one 'limitation specific law' enacted to govern period of limitation for special claim in Ethiopia. This proclamation is named as '*Period of Limitation for Submission of Restitution Claims and the Repossession of Public Properties Taken through Unlawful Restitutions Proclamation No.572/2008*'.

¹¹³ See www.lawcommission.justice.gov.uk/docs/cp151-Limitation-of-Actions-consultation.pdf, last accessed on May 5, 2015.

However, on the other hand, applying a certain GPoL at all times and to all claims, by the mere fact that special periods have not been fixed by law, may be against the very nature and purpose of the special law governing the claim at hand, making its application inappropriate with respect to certain claims. Here, the second argument comes into being: supporting the possibility where the GPoL could be disregarded at the discretion of the court under certain considerations.¹¹⁴ Consequently, one may argue that even though advocating the application of Art 1845 of the Civil Code in the absence of a special period of limitation is acceptable with a view to insure certainty and uniformity, the door should not be totally closed to the discretionary power of the court to apply some other alternative periods of limitation through interpretation, where the blind application of such GPoL may seem absurd given the circumstances of the case. However, this shall not be construed as if courts are allowed to fix periods of limitation. Since substantive periods of limitations are statutory in their nature, the court cannot fix such periods on behalf of the legislature. Nevertheless, this shall not prohibit courts from extending the application of a given special period of limitation to some other similar claims through interpretation of the limitation provision, while taking into account certain guiding factors justifying the application thereof.

Actually, in the task of determining the controlling period of limitation identifying the types of causes of action that the claim will be pursued under and the type of the relief sought are critical.¹¹⁵ Once the court identifies the kind of the claim or the relief sought, it shall apply the special period of limitation fixed to that effect, if there is any. But if not, the ten year GPoL may apply to such claims through Art 1676 and Art 1677 of the Civil Code. Nevertheless, as already reiterated above, there are different instances where the blind application of the ten-year period

¹¹⁴ D Morgan (1982), *'Limitation and Discretion: Procedural Reform and Substantive Effect'*, p. 23.

¹¹⁵ However, here it should be noted that the task of identifying the nature of the relief sought is not always easy. Owing to the possible similarities among different kinds of claims, one may confuse to identify the type of the claim that the plaintiff intended to demand and thereby identify the controlling period of limitation. From the Cassation decision cited below, one can understand how far the nature of claims and the way they are reflected under the pleading may lead to confusions while identifying the form of the relief sought. The issue was as to whether the claims at hand shall be determined as *'petitory action'* or *'action for the restoration of possession/action for the cessation of the interference'* as laid down under Art 1192 and Art 1149(2) of the Civil Code respectively. In juncture, it has been said that courts shall examine the nature and contents of claims while identifying the type of claim and thereby determining the controlling period of limitation. The decision shall not be rested solely up on what has been indicated in the heading/title of a given statement of claim as the relief sought. See *Asefa Ayele vs. Fikadu Mulugeta* (CFN 49985, *'Decisions of the Federal Supreme Court Cassation Division'*, Vol. 11, Hidar 28, 2003 EC.) and *Mergitu Negasa vs. Tsehay Ligaet al* (CFN 34406, Vol. 6, Miyaziaya 7/2001 EC.)

of limitation becomes illogical, which in return calls for revisiting its scope of application depending upon certain guiding factors, as the case may be. At this juncture, the author of this article also believes that given the existence of the large numbers of civil claims without special periods of limitation in the Ethiopian legal system, it is difficult to argue that the legislature is intended to govern all those claims by the ten year GPoL, using the mere ‘general reference’ made under Art 1676 and 1677 of the Civil Code and irrespective of any other considerations. This is because the special nature of the case, the objectives of the special law governing the case at hand, or some other policy reasons may demand either a short alternative period of limitation or exemption, as the case may be.

Therefore, with a view to reduce the misapplication of the ten-year period of limitation, adopting the system where such a long period of limitation (which is principally put in place for contractual claims) could be disregarded at the discretion of the court seems advisable. But to control arbitrary court discretions in this regard, the author urges the lawmaker must adopt some guiding factors or principles that the court shall take into account when disregarding the ten year period and applying some other shorter alternative period of limitation instead.

In this regard, different guiding factors could be taken into account while limiting the scope of application of the ten year period of limitation on a case by case bases in the manner that do not affect the constitutional right to access justice and the original intention of the legislature. As demonstrated in different Cassation decisions, the similarities among the natures of claims, the degree of the legal protection accorded to the right at hand, the overall purpose of the law and the maximum period of limitation stipulated for other claims that arise from the same cause of action are among those conditions that should be used to determine whether the legislature is intended to govern the claim at hand by the ten year GPoL or not. Some such factors are discussed as follows with relevant cassation decisions.

A. The Similarities among the Nature /Origin of Claims: The Rule of Analogy

Above all, it should be noted here that as part of the legal framework governing civil cases, the rules of limitation of actions including the determination of the controlling period of limitation is subject to interpretation.¹¹⁶ Thus, if we say the rule governing limitations of action is subject to interpretation, obviously the court will have room to determine the ambit of a given legally fixed

¹¹⁶ G. Nigel, *supra* note 64, p.390.

special period of limitation and thereby extend the scope of its application, as the case may be, before rushing to apply the ten year general period of limitation to all civil claims contrary to the purpose of the special legal regime governing the case at hand.

Actually, the task of identifying the controlling rule of limitation would be easy if the law itself gave room in which other similar claims could be easily categorized by *mutantis mutandis*¹¹⁷ or if ‘*an internal general period of limitation*’ has been fixed by law that could apply to all other claims other than those the law provides a special period of limitation.¹¹⁸ However, the point of contestation arises in the condition where the law provides special periods of limitation in the manner that only works for particular types of claims without leaving a clear space in which other similar claims could be easily assimilated with.¹¹⁹

At this juncture, the author believes that in the first place, the stipulation (or otherwise) of a special period of limitation should be exhaustively examined under the law directly relevant to the claim at hand before seeking the application of Art 1845 which is principally provided to govern contractual related claims. In addition, to the direct law governing the claim at hand, one should also critically examine the existence (or otherwise) of other alternative periods of limitation in more relevant and specific laws to the case at hand compared to the general contract part of the Civil Code where Art 1845 is stipulated. Consequently, the author believes that the failure of the directly relevant law to provide a special period of limitation does not necessarily mean that such a claim cannot be governed by other relevant alternative limitation provisions provided under other more specific relevant law other than the general rule of Art 1845.¹²⁰ For

¹¹⁷ For instance, see the phrase ‘...other similar payments...’ under Art 162 (3) of the Labour Proc. No. 377/2003 where bonus or overtime payments can be easily assimilated by analogy.

¹¹⁸ See for example Art 162(1) of the Labour Proc. which provides one- year general period of limitation for claims arise from employment relations in general.

¹¹⁹ For example, the only limitation provision in the “ordinary law of sale” of the Ethiopian Civil Code is Art 2298 that provides one- year period for warranty related claims of the buyer. The law of sale as governing a special type of contract does not stipulate special periods for other possible claims that could be brought by the contracting parties like claims for the invalidation of the contract, payment of the price and other claims based on the non-performance which pose a question as to whether or not the legislature is intended to govern all such claims by the ten year period of limitation stipulated in Art 1845 of the Civil Code while the nature of the claims required early settlements to minimize disrupting effects of unsettled claims on commercial intercourses.

¹²⁰ In this regard, I believe that, the phrase ‘*unless otherwise provided by law...*’ under Art 1845 of the Civil Code shall be construed broadly as if it connotes two possible special periods of limitations. Firstly, it implies to those special periods of limitation fixed by the directly relevant special law, governing the claim at hand. Secondly, if the law directly relevant to the claim at hand fails to fix such special period of limitation, the above phrase shall be construed to imply to those periods of limitation stipulated under other relevant, alternative and more specific law (compared to the general contract part of the Civil Code), where the claim at hand can be assimilated with such more

instance, regarding the claim of peasants for the restoration of the possession of farmland or the cessation of the interference from other persons, both the federal and regional land administration and use proclamations do not provide a special period of limitation. But since the nature of the claim obviously poses the issue of property law, the cassation division looks into the period provided in Art 1149(2) of the Civil Code as an alternative limitation provision though it later disregards its application on the bases of ‘constitutional test’. Moreover, it goes to Art 1845 of the Civil Code on the belief that it is under such longer GPoL that the constitutionally guaranteed rural land related rights of peasants can better be secured.¹²¹ But here it should be noted that had the issue of the ‘constitutional test’ is not addressed in the instant case, it seems that the period stipulated under Art 1149(2) of the Civil Code would have been applied by the Court. Moreover, the consideration of Art 1149(2) of the Civil Code by the court, as the legal provision stipulating an alternative period of limitation alone shows the possibility in which a given civil claim may be subjected to competing alternative periods of limitation other than the ten year GPoL. Therefore, since there is a possibility where a given claim may be governed by one or more categories of legal regime, before reaching a conclusion, that a special period of limitation has not been fixed by law and would go for Art 1845, one needs to examine whether or not the claim at hand could be governed by a period stipulated in other, more relevant and special laws.

To this effect, however, the limitation provisions stipulating special periods should not be interpreted too narrowly in the manner that makes the provisions inapplicable to other similar claims. Given the difficulty in stipulating special periods of limitation for each and every type of claims, applying the ten year GPoL to all cases by interpreting a given limitation provision, in a narrow manner, would be against the intension of the legislature. At this juncture, the author believes that the tendency of applying Art 1845 is often due to the court’s devotion in finding or

special and alternative periods of limitation by reason of their ‘origin’ or ‘nature’. A similar construction can also be made for other claims other than contractual claims from the in tandem reading of Art 1677 (2), which states, “...by reason of their origin or nature”, at least with respect to the general application of Art 1845. Therefore, I believe that where the law directly relevant to the claim at hand failed to fix a special period, the court shall further examine the existence or otherwise of other special periods of limitation in other relevant, alternative but more special laws using its power of interpretation before the move to apply the ten year general period of limitation.

¹²¹ See *Shelema Negese vs. Feyisa Mengistu*, ‘Decisions of the Federal Supreme Court Cassation Division’ (CFN 69302, Vol.13, Tahisas 20, 2004 EC.).

creating conditions of application which are not clearly stipulated in a given limitation provision in the name of interpretation.¹²²

To avoid narrower ways of interpretation, firstly, the conditions stipulated in the given limitation provision should be read cumulatively with other provisions of the law. Otherwise, the isolated reading of the limitation provision could cause the court to overlook conditions that are really constituted under the given limitation provision and pave the way for the inappropriate application of the ten year GPoL. For instance, in the case of *Aynalem Abebe vs Degefa Gurmu*¹²³, the lower courts argued that the time limit under Art 1000 of the Civil Code does not apply on the litigation that intends to ascertain whether the one who possessed the inheritance property is a true heir or not as if the provision applies only during the condition where the restitution of the inheritance property has been demanded by the claimant by alleging that he is a true heir. Later, the Cassation division criticized the lower court's decision and blamed the narrower interpretation of the provision for the erroneous interpretation arrived at without taking into account Art 999 of the Civil Code, which provides the scope of the possible claims to be constituted under a '*petition haereditatis*' action. The lower courts also committed a similar error

¹²² For instance, in the cases of *Dinke Tedla vs. Abate Chane*, '*Decisions of the Federal Supreme Court Cassation Division*' (CFN 17937, Vol. 4, Megabit 20,1999 EC) and in *Tegegne Yimam Vs Kasahun Desalegn* (CFN 25664, Vol. 6, Ginbot 7, 2000 EC), the Federal Supreme Court Cassation Division considered the identity or the status of the litigant parties as the condition to determine the scope of application of the period provided in Art 1000 of the civil code which is not clearly provided under the provision. Here the cassation division decided that the period fixed under Art 1000 can apply on '*petitio haereditatis*' action if the dispute is among and between heirs. In other words, in the conditions where a true heir brought a claim against non- heirs for the restoration of inheritance property illegally possessed by the latter, the applicable period would be ten year as provided in Art 1845 against the spirit of Art 1000. However, this does not mean that the strict observance of statutory conditions is always against the intention of the legislature and considered as creating new conditions. There may be instances where the objective of the law could be better achieved under the narrower interpretation of the provision as the case may be. For instance in the case of *Weldetsadik Birhanu et al vs. Sintayew Ayalew* (CFN 38935, '*Decisions of the Federal Supreme Court Cassation Division*', Vol. 8, Megabit 3, 2001 E.C.), the Cassation division decided that unless in the condition where the seller inform the buyer in unequivocal manner that he will not perform his obligation as laid down under Art 1789 of the civil code, the claim of the buyer of the immovable property for the performance of the sale contract should not be barred by one year period provided under Art 2892 (3) of the Civil Code. Instead the ten year general period of limitation should apply on the case. Here, the writer believed that given the large legal protection accorded to the rights attached with immovable properties, the strict observance of the statutory conditions via the narrower interpretation of Art 2892(3) by the court and goes to apply Art 1845, which provides a better chance to exercise such right seems in line with the intention of the legislature.

¹²³ See *Aynalem Abebe vs. Degefa Gurmu* (CFN 25567, '*Decisions of the Federal Supreme Court Cassation Division*', Vol.6, Hidar 12, 2000 EC). Here the Cassation Division decided that the period under Art 1000 of the Civil Code can be applied to the claim made for the acknowledgement of his status of heir as well as the claim for the restitution of the property of inheritance.

in the case of *Ethiopian Electric power Corporation vs. Fate Ali*¹²⁴ due to the narrower interpretation and isolated reading of the limitation provision while determining the applicability or otherwise of the period stipulated in Art 2143 of the Civil Code to compensation claims brought by the heirs of the victim following the death of the later. In this case, the lower court disregarded the two year period of limitation to bar compensation claims brought based on the death of the victim and opted for the ten year GPoL, arguing that the fact of “*death*” cannot be considered as the ‘*damage suffered*’ in the meaning of Art 2143 of the Civil Code.¹²⁵

Second, the similarity among the nature of the claims at hand and the legal framework they are categorized in can be another guiding factor that should be considered while interpreting limitation provisions and determining the applicable period of limitation for the claim at hand before rushing to apply Art 1845. At this juncture, in most jurisdictions of common law countries, it is the cause of action rather than the form of the remedy that mainly controls the determination of period of limitation, although in some jurisdictions the form is still held to control.¹²⁶ Since statutes of limitation are meant to prevent injustice when time has destroyed the evidence, the form of action or remedy would seem to be immaterial, which in return, paves the way for the analogical application of limitation provisions fixed for one type of remedy to another.¹²⁷

When we come to the Ethiopian judicial experience, in the case of *Ethiopian Insurance Corporation vs. Aregash Kebede*¹²⁸ for instance, the Cassation division gave a binding interpretation that the claim for compensation brought in the form of maintenance by the spouse, ascendants or descendants of the victim in the case of fatal accident is subject to the same period stipulated in Art 2143 of the Civil Code. Here, the court argued that in the condition where the bases of the compensation claim (in the form of maintenance) brought as per Art 2095 of the Civil Code arises from extra contractual relations and not from any legal relation, the two year

¹²⁴*Ethiopian Electric Power Corporation vs. Fate Ali* (CFN 34544, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 9, Tikimt 11, 2001 EC).

¹²⁵ However, the cumulative reading of Art 2143 with Art 2144 and other extra contractual provisions reveals the fact that the two- year period of limitation fixed in Art 2143(1) of the Civil Code can also be used to bar those compensation claims resulted due to the death of the victim.

¹²⁶ The Yale Law Journal, Vol.35, No.4 (Feb, 1926), ‘*Limitation of Actions- Gravament of Action Determinative as to Which Period of Limitation Applies*’, pp.508-509. Available at <http://www.jstor.org/stable/788645>, last visited on Nov, 2014.

¹²⁷ Ibid

¹²⁸*Ethiopian Insurance Corporation vs. Aregash Kebede* (CFN 16062, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 3, Hidar 19, 1998 EC.).

period provided in Art 2143 should be applied. Actually, when we examine the nature of the claim provided under Art 2143 and 2144 and Art 2095, one can observe certain differences. Art 2143 of the Civil Code provides the time in which a claim for compensation could be brought by the victim himself or by the victim's heirs (after his death as representative) *for the material damage he has suffered*; whereas, Art 2095 of the Civil Code provides the instance where the spouse, ascendants and descendants of the victim can bring a claim for compensation in the form of maintenance *for the material damage they have suffered* due to the death of the victim. However, even though there are slight differences between the two claims, applying the two-year period of limitation stipulated in Art 2143 to the case of Art 2095 seems logical since the two claims are arising out of the same legally recognized relation (i.e. Extra- contractual). Here, imagine how it would be against the intension of the legislature had Art 1845 been applied.

Similarly, in the case of *Megertu Negasa vs. Tsehay Lega*¹²⁹, the Cassation division decided that the compensation claims arising out of unlawful enrichment should be governed by the two year period of limitation, as stipulated in Art 2143 of the Civil Code for extra contractual cases. Here the cassation division acknowledged that the chapter dealing with unlawful enrichment does not provide a period of limitation for compensation claims; however, the court did not seek to apply the ten year period of limitation. Rather, it applied Art 2143 by analogy by taking into account the similarities among the source and natures of unlawful enrichment and extra contractual related obligations. This means the placement of the two obligations under the same title of the Civil Code and the extra contractual nature of the unlawful enrichment claims lead the court to construct the analogy, making compensation claims arising out of both extra contractual and unlawful enrichment relations to be subjected to the same limitation provision (Art 2143 of the Civil Code).

B. The General Purpose of the Law Governing the Claim at hand and the Maximum Period of Limitation Provided therein

Besides similarities among the nature of claims, one may use policy grounds/objectives to deduce that the legislature is not intended to govern the claims at hand by the ten year GPoL. Such policy grounds, *inter alia*, may take into account the special purpose of the law governing

¹²⁹*Megertu Negasa vs. Tsehay Lega* (CFN 34406, 'Decisions of the Federal Supreme Court Cassation Division', Vol.6, Miyaziya 7, 2000 EC).

the claim at hand and the maximum periods of limitation provided therein for other similar claims.

For instance, in labour case the law provides a one year period maximum period of limitation for claims arising out of ‘employment relationships’¹³⁰ though it also leaves room for the application of other periods of limitations and the execution rules thereof stipulated in other relevant laws as the case may be.¹³¹ Thus, in the conditions where the law provides the period of one year as the maximum period of limitation to a given category of claims, it is difficult to expect that the legislature is intended to govern other similar claims (for which special periods have not been fixed by law) by the ten year GPoL.

The fact that the stipulation of a one-year period as a maximum period of limitation also implies the intention of the legislature to dispose labour cases within short period of time which actually goes with the general purpose of the labour law. As envisaged in the preamble, one of the purposes of the labour law is to ensure that worker-employer relations to be governed under the basic principles of rights and obligations with a view to enable them to maintain industrial peace and work in the spirit of harmony and cooperation towards the all-round development of the

¹³⁰ Art 162 (1) of Labour Proc.No. 377/2003.

¹³¹Id, See Art 162(1) which states, ‘[u]nless a specific time limit is provided otherwise in this Proclamation or other relevant law, an action arising from an employment relationship shall be barred by limitation after one year from the date on which the claim becomes enforceable[.]’. See also Art 162 (5) which provides, ‘[t]he relevant law shall be applicable to the period of limitation which is not provided for in this Proclamation’ [.] However, here it is not easy to determine what the term ‘...other relevant law...’ implies under Art 162(1) & (5) of the Labour Proclamation. Particularly, with respect to Art 162(1), it is difficult to find such special periods of limitation stipulated in other relevant law while the claim at hand is arising from an ‘employment relationship’. Because, such special period stipulated in other relevant law to prevail over the one year ‘internal general period of limitation’, the said other relevant law should fix such special period in relation to the action arising from an employment relationship. At this juncture, determining as to whether the claim at hand is arise from an ‘employment relationship’ or not, by itself, is not also always easy. Nevertheless, I believe that there is no way where Art 1845 of the Civil Code can be considered as ‘other relevant law’ in the meaning of Art 162(1) of the labour Proclamation, because after all it does not provide ‘specific time limit’. If there is not such specific time limit in ‘other relevant law’, there is no way that one can apply the ten year period via Art 1676 in the presence of the more specific ‘internal general period of limitation’ (i.e. the one year period stipulated under Art 162(1) of the Labour Proc.). When we come to Art 162(5), I believe that the term ‘relevant law’ may imply three things. Firstly, it may be referring to the execution limitation provisions of the Civil Code (Art 1846-1856) other than those the labour Proclamation provides special rules (Art 163-166). Secondly, from the in tandem reading of Art 162(1) and 162(5), one can understand that the term ‘relevant law’ may be implying to those periods of limitation stipulated in other laws in relation to those claims not arising out of employment relation. For example, if the employee and the employer entered into loan contract, the claim arising out of such relation is out of the employment relations so that it shall be governed by other relevant law (the ten year GPoL since the part of the Civil Code dealing about loan contract does not provide special period). Thirdly, the term ‘relevant law’ may be referring to those procedural periods of limitation as stipulated under the Civil Procedure Code of Ethiopia unless special rules have been stipulated under the Labour Proclamation (See for example, Art 138(3) and Art 180 of the Labour Proc.).

country.¹³² In order to achieve the above objectives of the law, it is sound to argue that all other claims arise from employment relationships shall be governed by the maximum period of limitation stipulated in the labour law, which is one year¹³³, as an ‘*internal general period of limitation*’ for labour cases rather than hastening to apply the more general period of limitation stipulated for contractual claims in general. Accordingly, the author believes that before hurrying to apply Art 1845 to other specific claims, it is important to take into account the maximum period of limitation fixed in that particular law governing the claim at hand and examine whether the application of the ten year GPoL would distort the specific objective that the special law intended to achieve. Thus, the specific objectives of the law that governs the claim at hand should always be taken into consideration while interpreting and applying the provisions of the law including limitation provisions.

In this regard, even though the case is not directly dealing with the scope of application of Art 1845, the interpretations given in Cassation file number 53527¹³⁴ illustrate the need to interpret and apply limitation provisions in the manner that does not distort the purpose the particular law stands to achieve. The issue of the case was to determine whether the claim of the worker for the execution of the judgment ordering his reinstatement should be governed by the one year period as stipulated in Art 162(1) of the labour proclamation or the ten year period of limitation as stipulated in Art 384 of the Civil Procedure Code. Here, the court argued that period of limitation for execution of judgment in labour cases shall be governed by Art 162(1) of the labour proclamation, which provides a maximum one year period for all claims arise from employment relation, rather than the ten year period provided in Art 384 of the CPC.¹³⁵ The court arrived at this conclusion by taking into account the maximum period of limitation stipulated therein and the specific objectives of the labour law.¹³⁶

¹³² Id, see the Preamble.

¹³³ Id, see Art 162(1) which provides one year as internal general periods of limitation that can apply to all claims arise from employment relationships.

¹³⁴ *Ethiopian Postal service Agency vs. Bedaso Melkato* (CFN 53527, ‘*Decisions of the Federal Supreme Court Cassation Division*’, Vol. 11, Meskerem 27,2003 E.C).

¹³⁵ Here, it is important to note that Art 384 of the Civil Procedure Code that provides a period of limitation for the execution of judgments in civil cases can be considered as ‘relevant law’ in the meaning of Art 162(5) of the Labour Proclamation.

¹³⁶ At this juncture, the court asserted that allowing workers to open execution files up to ten year after the date of judgment would be against the very objective of the labour law, as proclaimed in the preamble of the labour Proclamation. Because unless the worker performed his duties while being at time and place of work, the employer cannot increase or enhance the production. Consequently, the court concluded that governing the application for the

In conclusion, even though the period provided in Art 384 of the CPC indeed applies to all claims related with the execution of judgments in civil cases, this case, at least by analogy, shows the possibility where shorter limitation periods would be justifiable depending upon the particular purpose of the law governing the case at hand. The writer also believes that similar justifications can be used to disregard the ten year GPoL stipulated in Art 1845 of the Civil Code.¹³⁷

5.2. Exempting Certain Claims from the Subject of Limitation in the Absence of Exclusionary rules: The Issue of Judicial Discretion

From the very purpose of periods of limitation every type of claim is expected to be barred by periods of limitation as a rule. If we say being subject to limitation is a rule, the exclusionary rules shall be considered as exceptions and be interpreted narrowly. Consequently, in order to say a certain claim is not barred by period of limitation confidently, the law shall provide a clear exclusionary rule to that effect. Thus, as a principle, the failure of the law to provide a special period of limitation for certain civil claims neither means that they are automatically excluded from the subject of period of limitation nor that a court can fix a period at its own discretion. Rather, principally they will be governed by the ten year GPoL as stipulated under Art 1845 of the Civil Code. However, due to the absence of exclusionary rules in our civil laws, a question may arise as to whether the rest of all claims are subject to limitation or not.

In Ethiopia, we cannot find a legal provision that authorizes courts to exclude certain claims from the subject of limitation in the conditions where neither special period of limitation nor exclusionary rules have been provided. But even though there is no legal provision that provides room for court discretion, as revealed under cassation decisions, there are different instances where a given claim can be exempted from the subject of limitation under justifiable grounds.

execution of judgment in labour dispute cases by the one- year period of limitation, which is the maximum period stipulated in the labour law, goes with the specific purpose of the labour law.

¹³⁷However, although the writer used the above discussed cassation case just to give emphasis to such justifications given to disregard the application of Art 384 of the CPC and to urge for the analogical application of the same justifications in disregarding the ten year general period of limitation, he did not agree with the assertion of the court that the claim for the execution of judgment in the case of labour disputes has been addressed by Art 162(1) of the Labour Proclamation. In this regard, I believe that the chapter of the labour proclamation dealing about period of limitation in general as well as Art 162(1) in particular are not intended to govern procedural periods of limitation (for example, the period for the execution of judgment). Instead, the limitation provisions including Art 162(1) are principally put in place with respect to substantive periods of limitation. Therefore, I do not believe that the period for execution of judgment can be assimilated under the meanings of 162(1), which is dealing about substantive periods of limitation rather than procedural periods of limitation.

For instance, the cassation decisions given in file numbers 43600¹³⁸, 28686¹³⁹, 42824¹⁴⁰ and 44025¹⁴¹ urge the need to leave space for judicial discretion where the court may exempt certain claims from the subject of limitation on the grounds of policy by taking into consideration the overall nature of the claim, the legal protection given to the right at hand and the intention of the legislature. The writer also believes that before rushing to apply the general period of limitation provided in the general part of the Civil Code via Art 1677(1) of the CC, the reasons behind that, whether the claim shall be excluded from the subject of period of limitation or not, first be examined in relation to the provisions of the law having direct relevance to the case at hand.

However, since exclusionary rules are exceptions, the court should not be liberal when exercising such discretion. In this respect, for instance, even though the cassation division in files

¹³⁸ See *Dawit Mesfin vs. Government House Agency* (CFN 43600, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol.10, Tir 5, 2002 EC.) (See Art 1677, 1206, 1188-1192 of the Civil Code cumulatively). According to this decision a petitory action brought under Art 1206 of the Civil Code by the owner of immovable property shall not be barred by limitation. Unlike Art 1192 which applies in the case of corporeal chattel, the property law does not provide a condition where the owner may lose his ownership rights on immovable property on the grounds of limitation or prescription. However, as revealed in the instant case, the mere absence of special period of limitation to the petitory action brought by the owner of immovable property does not necessarily imply the application of Art 1845 of the Civil Code. The court insists that given the large legal protection accorded to the ownership rights of immovable property, it would be unreasonable to expect that the law failed to provide a special period of limitation for petitory action concerning immovable property, while providing the same for movable property, because it was intended to govern the former claim by the ten year general period of limitation.

¹³⁹ See *Governemnt House Rental Agency Vs Gizaw Mengeta* (CFN 28686, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 6, Hidar 24, 2000 EC). The court argued that in the condition where the breach of the contract has been continued (during the continuing breach of contract), the claim brought against the defendant to stop the act of violation or to demand the order of cancellation shall not be barred by limitation. In this case the present respondent has been used the house for hotel business contrary to the purpose stipulated in the terms of the contract of lease for more than 20 years without the consent of the present applicant where the latter required the cancelation of the contract thereafter. In the instant case, the court rests its decision on Art 1846 of the Civil Code by arguing that in the condition where the violation of terms of a contract has been continued, it is difficult/impossible to determine as to the time when the act of violation has started or discontinued from the nature of the contract so that the applicant’s claim for the cancellation of the contract and the return of the possession of the house shall not be barred by limitation and thus can be brought at any time.

¹⁴⁰ See *Birhan Tesema vs. Tamirat Ayane*, (CFN 42824, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol.11, Hidar 8,2002 EC.). The decision confirmed that injunction claims brought by the neighbor of the defendant demanding the cessation of nuisance (sound pollution) as per Art 1225 of the Civil Code shall not be barred by limitation. And the period stipulated in Art 1149 of the Civil Code cannot apply to such claims brought under Art 1225 of the same Code. The court further argued that since the nuisance is inevitable and will be continued as far as the activities creating nuisance continues, the passage of time after the commencement of the activity can not hinder the applicant to demand the cessation of nuisance. And there shall not be any legal ground that allows once created nuisance to be continued on the ground of limitation.

¹⁴¹ See *W/t Tsehay Haile et al (4 people) vs. W/ro Felka Begna*, (CFN 44025, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 10, Hamle 22, 2002 EC). Here the cassation division decided that in the condition where the property of inheritance has been jointly administered by co-heirs, the claim for succession brought by one of the heir who jointly possessed the property against the other co-possessor shall not be barred by limitation. Otherwise governing the claim brought by the possessor against another co-possessor by rule of limitation would be against the notion of period of limitation.

number 43600¹⁴² declared that given the large legal protections accorded to the ownership right of immovable property a petitory action concerning immovable property cannot be barred by limitation, it does not mean that all petitory actions are excluded from the subject of limitation. If the point of contention is on the ownership rights of immovable property which have emanated from succession, sale or donation contracts, the issue of whether a petitory action brought by the alleged owner is barred by limitation or not should be governed by the part of the law governing the case at hand namely succession, sale and donation related limitation provisions of the Civil Code rather than property law.¹⁴³ Accordingly, a petitory action brought by the donee, for instance, shall be barred by limitation unless he is able to execute the donation contract before the expiry of ten year from the date of donation.¹⁴⁴

Concluding Remarks

Due to the absence of a separate and comprehensive limitation statute, the legal regime governing civil periods of limitation in Ethiopia are incomplete with a number of lacunas. The existence of a number cassation decisions on different aspects of periods of limitations can evidence the lack of clarity of the law in this regard. This is particularly true with respect to the dimension and scope of application of the ten year GPoL stipulated under Art 1845 of the Civil Code.

Although the argument advocating for the general application of the ten year period of limitation in the absence of special periods to that effect is a widely shared view, the immediate rush to apply such a long period, which is principally fixed for contractual claims, to all claims and at all times without any consideration would make its application illogical, particularly with respect to certain kind of claims. To reduce such blind application of the ten year GPoL to inappropriate cases, this article calls for the need to revisit its scope of application at least by way of allowing some space for judicial discretion, where the court can apply either some other period of limitation to other similar claims by analogy or exempted certain claim from the subject of limitation on the basis of certain guiding considerations. In this regard, the similarities among the

¹⁴² See *Dawit Mesfin vs. Government House Agency*, *supra* note 138.

¹⁴³ See *Yeshareg Kebede and Hana Admasu vs. Yeshiwork mokenin* (CFN 71537, ‘Decisions of the Federal Supreme Court Division’, Vol. 14, Tahisas 02, 2005 EC).

¹⁴⁴ See *Adefres Bekele vs. Yikum Bekele* (CFN 42691, ‘Decisions of the Federal Supreme Court Cassation Division’, Vol. 10, Megabit 22/2002 EC). Here, on the ground that the part of the Civil Code that deals about contract of donation does not provide a special period for such claim, the court applied the ten year general period of limitation of Art 1845 via Art 1676(1) of the Civil Code.

nature/origin of claims, the form of the law under which the claims could be categorized, the overall purpose of the law governing the claim at hand, and the maximum period of limitation provided therein for other similar claims arising from the same cause of action could serve as a litmus paper to determine whether the legislature is intended to govern the claim at hand by the ten year GPoL or not and thereby identify the controlling period of limitation.

However, since the reliance on judicial discretion in overriding a limitation period would render the law too uncertain, it is advisable rather to adopt a separate and relatively comprehensive statute of limitation that clearly provides, *inter alia*, the dimension and scope of application of the ten year GPoL and lists of exempted claims. Furthermore, rather than having a single GPoL, it is advisable to have different ‘*internal general periods of limitation*’ for certain categories of claims as the case may be, taking into account the very objectives of the special laws governing such claims. This would reduce the inappropriate application of the GPoL, which is usually a longer period, to all types of claim contrary to the nature or objectives of the special laws governing certain kinds of civil claims.